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NORTH DAKOTA STATUTES RELATING TO RAPID POPULATION GROWTH

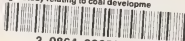
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OLD WEST REGIONAL COMMISSION

A Legal Study
Relating to
Coal Development --
Population Issues

Volume Five

North Dakota Statutes
Relating to
Rapid Population Growth

Prepared By

Kutak Rock Cohen Campbell
Garfinkle & Woodward

Omaha, Nebraska

OVERVIEW OF VOLUME FIVE

Volume five is a selective collection of North Dakota statutes arranged in accordance with a specially devised subject matter outline entitled the Common Index and incorporating all amendments enacted prior to September 3, 1974. Statutes creating various methods of financing capital construction by both public and private entities are obviously relevant to this Study. While summaries of such statutes are included in volume three, the statutes themselves have purposely been excluded from volume five. One reason for this exclusion is that such statutes are easily located through more traditional index references to the particular type of facility to be constructed. In addition, statutes relating to financing methods are customarily applicable only to particular entities or particular types of facilities rather than being of general or state-wide interest.

Preparation of this volume began with formation of the Common Index. This Common Index is a comprehensive summary of topics which must be addressed in order to effectively respond to rapid population influx. The

same Common Index has been utilized in selecting and arranging statutes from each of the three states which are the focus of this Study. The Index is comprised of five major topics with each representing a general category of anticipated problems. Subdivisions have been prepared within each major topic based upon either topical or state-county-city distinctions. Thus, as completed for each state, the Common Index may accurately be described as an abbreviated catalog of the legal and regulatory issues relevant to the problems of rapid population influx and a summary of that state's statutory response or lack thereof, to those issues.

Following completion of the Common Index, the sixty-five separate Titles which comprise the North Dakota statutes were briefly examined and thirteen of those Titles were designated for more thorough analysis. A complete list of the statutory Titles may be found on the page entitled North Dakota Statutes; those Titles which were thoroughly analyzed are indicated by an asterisk.

The complete index of each of the thirteen Titles selected for thorough analysis, in the numerical sequence of the Titles themselves, follows the North Dakota Statutes

circumstances may volume five be relied upon to disclose any statutory alterations which occurred subsequent to that date. The Old West Regional Commission gratefully acknowledges the permission of the Allen Smith Company to include certain copyrighted materials herein.

September 3, 1974

Common Index subheading which encompasses that statute. The particular statute will be located immediately following the blue divider page whose tab corresponds to the appropriate Common Index subheading. In the section following each divider page, all statutes are arranged in their normal numerical sequence.

Location of statutes germane to a particular subject when the citation to those statutes is unknown can be accomplished in either of two ways. First, reference to the Common Index will identify subheadings of this volume which deal with particular subjects. If no citation appears beneath the subheading for the topic sought, no substantive state statute addressed to that topic is currently in force. (Individual cities and counties may, however, have enacted local requirements with respect to these subjects.) In the alternative, an examination of the list of Titles of the North Dakota statutes, followed by a review of the appropriate Title index will also establish which subheading contains the material sought.

The reader is cautioned that material contained in this volume was current as of September 3, 1974. Under no

listing. Those individual chapters and sections which were selected for reproduction in volume five are indicated by a reference to the applicable subsection of the Common Index in the left margin of the Title index. If no citation to the Common Index appears in the left margin, the adjacent chapter or article was determined to be immaterial to the issues identified by the Common Index.

Revisions of the Title indices appearing in supplements to the statutes have been reproduced immediately following the complete Title index found in the most recent edition of the North Dakota statutes. However, in the body of volume five, amendments to all included statutes have been incorporated at their appropriate location within the statutory scheme and are identified only by marginal references to the statutory supplement in which they appear.

As is more fully explained in the section concerning use of this Study, the most rapid method of locating a statute when its full citation is known is to examine the index to the Title in which that statute appears and, from the adjacent notation in the left margin, determine the

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TITLE 42

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- 54-10 State Auditor, §§ 54-10-01 to 54-10-11.
- 54-11 State Treasurer, §§ 54-11-01 to 54-11-14.
- 54-12 Attorney General, §§ 54-12-01 to 54-12-12.
- 54-13 Board of Auditors—Repealed.
- 54-14 State Auditing Board—Claims against State, §§ 54-14-01 to 54-14-06.
- 54-15 State Budget Board, §§ 54-15-01 to 54-15-15.
- 54-16 Emergency Commission, §§ 54-16-01 to 54-16-11.
- 54-17 Industrial Commission, §§ 54-17-01 to 54-17-23.
- 54-18 North Dakota Mill and Elevator Association, §§ 54-18-01 to 54-18-17.
- 54-19 State Industrial Alcohol Plant, §§ 54-19-01 to 54-19-03.
- 54-20 Electrical Enterprise of State—Repealed.
- 54-21 Board of Administration, §§ 54-21-01 to 54-21-24.
- 54-22 Purchasing Agent—Repealed.
- 54-23 Institutions under Control of Board of Administration, §§ 54-23-01 to 54-23-55.
- 54-23A State Radio Broadcasting System, §§ 54-23A-01 to 54-23A-07.
- 54-24 State Library Commission, §§ 54-24-01 to 54-24-08.
- 54-25 State Institutions—Regulation as to Sale and Use of Dairy Products, §§ 54-25-01 to 54-25-04.
- 54-26 State Census—Repealed.
- 54-27 Fiscal Administration, §§ 54-27-01 to 54-27-18.
- 54-28 Capitol Building Certificates—Omitted.
- 54-29 State Bonds, General Provisions, §§ 54-29-01 to 54-29-05.
- 54-30 Bonds of North Dakota, Real Estate Series, §§ 54-30-01 to 54-30-28.
- 54-31 Bonds of North Dakota, Mill and Elevator Series, §§ 54-31-01 to 54-31-09.
- 54-32 North Dakota Mill and Elevator Refunding Bonds, §§ 54-32-01 to 54-32-29.
- 54-33 Post-War Planning Board—Repealed.
- 54-34 Economic Development Act of 1957, §§ 54-34-01 to 54-34-08.
- 54-35 Legislative Research Committee, §§ 54-35-01 to 54-35-10.
- 54-36 Indian Affairs Commission, §§ 54-36-01 to 54-36-07.
- 54-37 Veterans Adjusted Compensation Bonds—Omitted.
- 54-38 State Commission on Alcoholism, §§ 54-38-01 to 54-38-09.
- 54-39 Korean Conflict Bonus Bond Issue—Omitted.
- 54-40 Joint Exercise of Governmental Powers, §§ 54-40-01 to 54-40-07.
- 54-41 North Dakota Coat of Arms, §§ 54-41-01 to 54-41-05.
- 54-42 North Dakota Merit System Council, §§ 54-42-01 to 54-42-03.
- 54-43 Theodore Roosevelt Centennial Commission—Omitted.
- 54-44 Department of Accounts and Purchases, §§ 54-44-01 to 54-44-11.
- 54-45 Department of Civil Air Patrol, §§ 54-45-01 to 54-45-03.

TITLE 54—STATE GOVERNMENT

Chapter

- 54-01 Sovereignty and Jurisdiction of State, §§ 54-01-05.3, 54-01-05.4, 54-01-17, 54-01-17.1, 54-01-19, 54-01-26.
- 54-01.1 Model Relocation Assistance Act, §§ 54-01.1-01 to 54-01.1-16.
- 54-02 State Emblems, Symbols, and Awards, §§ 54-02-07, 54-02-08.
- 54-03 Legislative Assembly, §§ 54-03-01.5, 54-03-01.6, 54-03-02 to 54-03-04, 54-03-06, 54-03-10, 54-03-11, 54-03-20 to 54-03-20.3, 54-03-22 [§§ 54-03-01 to 54-03-01.4, 54-03-21 Repealed].
- 54-03.1 Organizational Session, §§ 54-03.1-02, 54-03.1-03 [§§ 54-03.1-01, 54-03.1-04 Repealed].
- 54-03.2 Conduct of Legislative Investigations, §§ 54-03.2-01 to 54-03.2-16.
- 54-04 Engrossing and Enrolling Legislative Bills, §§ 54-04-01, 54-04-03, 54-04-04 [§ 54-04-02 Repealed].
- 54-06 General Provisions, State Officers, §§ 54-06-03 to 54-06-05, 54-06-08.1, 54-06-09, 54-06-09.1, 54-06-10, 54-06-14 to 54-06-16.
- 54-07 Governor, §§ 54-07-01.1, 54-07-01.2, 54-07-04 to 54-07-06.
- 54-08 Lieutenant Governor, § 54-08-03.
- 54-09 Secretary of State, §§ 54-09-02, 54-09-04, 54-09-05.
- 54-10 State Auditor, §§ 54-10-01, 54-10-10, 54-10-12 to 54-10-25.
- 54-11 State Treasurer, §§ 54-11-01, 54-11-04, 54-11-06, 54-11-07, 54-11-13 [§ 54-11-02 Repealed].
- 54-12 Attorney General, §§ 54-12-01, 54-12-05, 54-12-11, 54-12-13 [§ 54-12-12 Repealed].
- 54-14 Claims against State—Office of the Budget, §§ 54-14-01.1, 54-14-03, 54-14-03.1, 54-14-04, 54-14-04.1, 54-14-07, 54-14-08 [§§ 54-14-01, 54-14-02, 54-14-05 Repealed].
- 54-15 State Budget Board [Repealed].
- 54-16 Emergency Commission, §§ 54-16-01, 54-16-03, 54-16-04, 54-16-04.1, 54-16-06, 54-16-09, 54-16-12.
- 54-17 Industrial Commission, §§ 54-17-02, 54-17-05, 54-17-06, 54-17-24 to 54-17-26.
- 54-17.1 Vietnam Veterans' Bonus Bond Issue, §§ 54-17.1-01 to 54-17.1-13.
- 54-19 State Industrial Alcohol Plant [Repealed].
- 54-21 Director of Institutions, §§ 54-21-06, 54-21-06.1, 54-21-07, 54-21-09 to 54-21-13, 54-21-17 to 54-21-20, 54-21-21 to 54-21-27 [§§ 54-21-01 to 54-21-05, 54-21-08, 54-21-14 Repealed].
- IC-3a 54-21.1 Uniform Standards Code for Mobile Homes, §§ 54-21.1-01 to 54-21.1-12.
- 54-23 Institutions under Control of Director of Institutions, §§ 54-23-01, 54-23-22, 54-23-24, 54-23-25, 54-23-28, 54-23-38, 54-23-40, 54-23-41, 54-23-56 to 54-23-59 [§§ 54-23-16, 54-23-21, 54-23-41.1 Repealed].

STATE GOVERNMENT

- Chapter
- 54-23.1 State Communications System, §§ 54-23.1-01 to 54-23.1-12.
- 54-24 State Library Commission, §§ 54-24-03, 54-24-08, 54-24-09 [§§ 54-24-04 to 54-24-06 Repealed].
- 54-24.1 Interstate Library Compact, §§ 54-24.1-01 to 54-24.1-06.
- 54-25 State Institutions—Regulation as to Sale and Use of Dairy Products [Repealed].
- 54-27 Fiscal Administration, §§ 54-27-04, 54-27-10 to 54-27-13, 54-27-16, 54-27-19, 54-27-20 [§§ 54-27-05, 54-27-06, 54-27-09 Repealed].
- 54-30 Bonds of North Dakota, Real Estate Series, §§ 54-30-29 to 54-30-33.
- 54-34 Business and Industrial Development Act, 54-34-01 to 54-34-04, 54-34-06, 54-34-08 [§§ 54-34-05, 54-34-09 Repealed].
- ID-1a 54-34.1 State Planning Division, §§ 54-34.1-01 to 54-34.1-06, 54-34.1-08 to 54-34.1-15 [§ 54-34.1-07 Repealed].
- 54-34.2 Indian Development Fund, §§ 54-34.2-01 to 54-34.2-05.
- 54-35 Legislative Council, §§ 54-35-01 to 54-35-14.
- 54-35.1 Legislative Audit and Fiscal Review Committee [Repealed].
- 54-36 Indian Affairs Commission, §§ 54-36-01, 54-36-03, 54-36-06.
- 54-38 Division of Alcoholism and Drug Abuse, §§ 54-38-01, 54-38-02, 54-38-05 to 54-38-07, 54-38-09 [§§ 54-38-03, 54-38-04, 54-38-08 Repealed].
- IB-5 54-40 Joint Exercise of Governmental Powers, §§ 54-40-08, 54-40-09.
- 54-42 North Dakota Merit System Council, §§ 54-42-01 to 54-42-06.
- 54-44 Department of Accounts and Purchases, §§ 54-44-04, 54-44-04.1, 54-44-05, 54-44-11 to 54-44-13.
- 54-44.1 Office of the Budget, §§ 54-44.1-01 to 54-44.1-14.
- 54-44.2 Office of Central Data Processing, §§ 54-44.2-01 to 54-44.2-06.
- 54-46 Records Management, §§ 54-46-01 to 54-46-13.
- 54-46.1 Central Microfilm Unit, §§ 54-46.1-01 to 54-46.1-07.
- 54-47 Continuity of Government, Executive, Judiciary, and Political Subdivisions, §§ 54-47-01 to 54-47-13.
- 54-48 Continuity of Government, Legislative Assembly, §§ 54-48-01 to 54-48-13.
- 54-49 Natural Resources and Environmental Management Council [Repealed].
- 54-50 Peace Officers' Commission [Repealed].
- 54-51 Interchange of Government Employees, §§ 54-51-01 to 54-51-11.
- 54-52 State Employees Retirement Program, §§ 54-52-01 to 54-52-14, 54-52-16 to 54-52-23, 54-52-25 [§§ 54-52-15, 54-52-24 Repealed].
- 54-52.1 Uniform Group Insurance Program, §§ 54-52.1-01 to 54-52.1-10.
- 54-52.2 Deferred Compensation Plan for Public Employees, §§ 54-52.2-01 to 54-52.2-07.
- 54-53 Upper Great Plains Transportation Institute, §§ 54-53-01 to 54-53-04.
- 54-54 Council on Arts and Humanities, §§ 54-54-01 to 54-54-07, 54-54-09 [§ 54-54-08 Repealed].

TITLE 55

STATE HISTORICAL SOCIETY AND STATE PARKS

Chapter

- 55-01 State Historical Society, §§ 55-01-01 to 55-01-11.
- 55-02 Superintendent of Society, State Monuments, §§ 55-02-01 to 55-02-07.
- 55-03 Protection of Prehistoric Sites and Deposits, §§ 55-03-01 to 55-03-07.
- ID-5 55-04 Acquiring Lands for Public Parks, §§ 55-04-01 to 55-04-03.
- 55-05 International Peace Garden, §§ 55-05-01 to 55-05-03.
- 55-06 Historical Study of Yellowstone and Missouri River Confluence, §§ 55-06-01, 55-06-02.
- 55-07 Recreational Development Bonds [Repealed].
- 55-08 North Dakota Park Service, §§ 55-08-01, 55-08-03 to 55-08-14 [55-08-02 Repealed].
- 55-09 Heritage Commission, §§ 55-09-01 to 55-09-06.
- 55-10 Preservation of Historic Sites and Antiquities, §§ 55-10-01 to 55-10-11.

TITLE 55—STATE HISTORICAL SOCIETY AND STATE PARKS

Chapter

- 55-08 North Dakota Park Service, §§ 55-08-05, 55-08-06.1.

TITLE 58

TOWNSHIPS

	Chapter	
IA-2	58-01	General Provisions, §§ 58-01-01 to 58-01-03.
IA-2	58-02	Creation, Consolidation, Division, and Dissolution, §§ 58-02-01 to 58-02-32.
IB-2d		
IB-2c	58-03	Powers of Township and of Electors of the Township, §§ 58-03-01 to 58-03-07, 58-03-09 to 58-03-15 [§ 58-03-08 Repealed].
IC-1b	58-04	Township Meetings and Elections, §§ 58-04-01 to 58-04-20.
	58-05	Township Officers Generally, §§ 58-05-01, 58-05-02, 58-05-04 to 58-05-16, 58-05-18 [§§ 58-05-03, 58-05-17 Repealed].
IB-2c	58-06	Board of Township Supervisors, §§ 58-06-01 to 58-06-10.
	58-07	Township Clerk, §§ 58-07-01 to 58-07-05.
	58-08	Township Treasurer, §§ 58-08-01 to 58-08-08.
	58-09	Assessors, §§ 58-09-01 to 58-09-03.
	58-10	Constables, §§ 58-10-03 to 58-10-05 [§§ 58-10-01, 58-10-02 Repealed].
	58-11	Township Board of Auditors, §§ 58-11-01 to 58-11-06.
	58-12	Township Overseer of Highways, §§ 58-12-01 to 58-12-07.
	58-13	Pounds and Poundmasters, §§ 58-13-01 to 58-13-07.
	58-14	Suits by and against Townships, §§ 58-14-01 to 58-14-03, 58-14-05 to 58-14-08 [§ 58-14-04 Repealed].
IB-3c	58-15	Police in Unincorporated Townsite, §§ 58-15-01 to 58-15-07.
IB-3c	58-16	Sidewalk Construction and Street Light Installation in Unincorporated Townsite, §§ 58-16-01 to 58-16-05.
ID-5	58-17	Township Parks, §§ 58-17-01 to 58-17-03.

TITLE 58—TOWNSHIPS

	Chapter	
	58-04	Township Meetings and Elections, §§ 58-04-05, 58-04-10.
	58-05	Township Officers Generally, §§ 58-05-02, 58-05-18.
IB-2c	58-06	Board of Township Supervisors, § 58-06-02.
	58-07	Township Clerk, § 58-07-01.
	58-08	Township Treasurer, § 58-08-01.
	58-09	Assessors, § 58-09-02 [§ 58-09-01 Repealed].

TITLE 61—WATERS

Chapter

- 61-01 General Provisions, §§ 61-01-01.1, 61-01-02, 61-01-14, 61-01-18, 61-01-23 to 61-01-26.
- 61-02 Water Conservation Commission, §§ 61-02-02, 61-02-04, 61-02-12, 61-02-14, 61-02-20, 61-02-23 to 61-02-24.1, 61-02-28, 61-02-30, 61-02-31, 61-02-38, 61-02-46 to 61-02-48, 61-02-53, 61-02-64, 61-02-64.1, 61-02-75 [§§ 61-02-70, 61-02-74 Repealed].
- 61-03 State Engineer, §§ 61-03-04, 61-03-21.
- 61-04 Appropriation of Water, §§ 61-04-02, 61-04-04 to 61-04-06, 61-04-09, 61-04-11, 61-04-14, 61-04-15, 61-04-22 to 61-04-23 [§§ 61-04-08, 61-04-10, 61-04-13, 61-04-18 to 61-04-21 Repealed].
- 61-05 Organization of Irrigation Districts, §§ 61-05-01, 61-05-13, 61-05-19.
- 61-06 Government of Irrigation Districts, §§ 61-06-01, 61-06-10, 61-06-12, 61-06-17, 61-06-18, 61-06-21, 61-06-22.
- 61-07 Powers of Irrigation Districts, §§ 61-07-06, 61-07-19, 61-07-24, 61-07-31.
- 61-08 Fiscal Affairs of Irrigation Districts, §§ 61-08-02, 61-08-03, 61-08-07, 61-08-12, 61-08-20, 61-08-31.
- 61-09 Assessments in Irrigation Districts, §§ 61-09-01, 61-09-06.
- 61-10 Changing Boundaries of Irrigation Districts, §§ 61-10-25, 61-10-28, 61-10-29, 61-10-31, 61-10-33, 61-10-36, 61-10-38.
- 61-11 Dissolution of Irrigation Districts, §§ 61-11-02, 61-11-04.
- 61-12 Flood Irrigation Projects, §§ 61-12-30, 61-12-38.
- 61-14 General Rules Governing Irrigation, § 61-14-03 [§§ 61-14-02, 61-14-04 Repealed].
- ID-2 61-15 Water Conservation, §§ 61-15-04, 61-15-08 [§ 61-15-07 Repealed].
- 61-16 Water Management Districts, §§ 61-16-01, 61-16-05 to 61-16-08, 61-16-11 to 61-16-15, 61-16-17 to 61-16-19.1, 61-16-21 to 61-16-23, 61-16-26.1, 61-16-28, 61-16-28.1, 61-16-29, 61-16-32 to 61-16-36, 61-16-46 to 61-16-49 [§§ 61-16-02 to 61-16-04, 61-16-20, 61-16-41, 61-16-42 Repealed].
- 61-17 Tri-State Water Compact [Repealed].
- 61-18 Erection and Maintenance of Dams [Repealed].
- 61-19 Revetment Works, § 61-19-08.
- 61-20 Artesian Wells, §§ 61-20-05 to 61-20-07 [§ 61-20-08 Repealed].
- 61-21 Drainage Projects, §§ 61-21-01, 61-21-03, 61-21-04, 61-21-13 to 61-21-16, 61-21-18, 61-21-19, 61-21-22, 61-21-24, 61-21-29, 61-21-39, 61-21-43.1, 61-21-45, 61-21-46, 61-21-50, 61-21-53, 61-21-56, 61-21-62, 61-21-65, 61-21-66.
- 61-22 Township Projects [Repealed].
- 61-24 Garrison Diversion Conservancy District, §§ 61-24-03.1, 61-24-04, 61-24-06, 61-24-08, 61-24-09, 61-24-13, 61-24-16, 61-24-18, 61-24-19.
- 61-25 Reclamation Districts [Repealed].
- 61-26 City Joint Use of Drains, §§ 61-26-01, 61-26-02.
- 61-27 Roating Regulations [Repealed].
- 61-28 Control, Prevention, and Abatement of Pollution of Surface Waters, §§ 61-28-01 to 61-28-08.

TITLE 61

WATERS

Chapter

- 61-01 General Provisions, §§ 61-01-01 to 61-01-23.
- 61-02 Water Conservation Commission, §§ 61-02-01 to 61-02-74.
- 61-03 State Engineer, §§ 61-03-01 to 61-03-21.
- 61-04 Appropriation of Water, §§ 61-04-01 to 61-04-22.
- 61-05 Organization of Irrigation Districts, §§ 61-05-01 to 61-05-21.
- 61-06 Government of Irrigation Districts, §§ 61-06-01 to 61-06-23.
- 61-07 Powers of Irrigation Districts, §§ 61-07-01 to 61-07-33.
- 61-08 Fiscal Affairs of Irrigation Districts, §§ 61-08-01 to 61-08-40.
- 61-09 Assessments in Irrigation Districts, §§ 61-09-01 to 61-09-20.
- 61-10 Changing Boundaries of Irrigation Districts, §§ 61-10-01 to 61-10-38.
- 61-11 Dissolution of Irrigation Districts, §§ 61-11-01 to 61-11-16.
- 61-12 Flood Irrigation Projects, §§ 61-12-01 to 61-12-48.
- 61-13 Organization of Corporations for Irrigation Purposes, §§ 61-13-01 to 61-13-04.
- 61-14 General Rules Governing Irrigation, §§ 61-14-01 to 61-14-15.
- 61-15 Water Conservation, §§ 61-15-01 to 61-15-10.
- ID-2 61-16 Water Conservation and Flood Control Districts, §§ 61-16-01 to 61-16-45.
- 61-17 Tri-state Water Compact, §§ 61-17-01, 61-17-02.
- 61-18 Erection and Maintenance of Dams, §§ 61-18-01 to 61-18-20.
- 61-19 Revetment Works, §§ 61-19-01 to 61-19-17.
- 61-20 Artesian Wells, §§ 61-20-01 to 61-20-08.
- 61-21 Drainage Projects, §§ 61-21-01 to 61-21-64.
- 61-22 Township Projects, §§ 61-22-01 to 61-22-11.
- 61-23 Yellowstone River Compact, §§ 61-23-01, 61-23-02.
- 61-24 Garrison Diversion Conservancy District, §§ 61-24-01 to 61-24-17.
- 61-25 Reclamation Districts, §§ 61-25-01 to 61-25-35.
- 61-26 City Joint Use of Drains, §§ 61-26-01 to 61-26-03.
- 61-27 Boating Regulations, §§ 61-27-01 to 61-27-14.

Section 167. The Legislative Assembly shall provide by general law for organizing new counties, locating county seats thereof temporarily, and changing the county lines; but no new county shall be organized, nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than five thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.

The Legislative Assembly shall also provide by general law for the consolidation of counties, and for their dissolution, but no counties shall be consolidated without a fifty-five per cent vote of those voting on the question in each county affected, and no county shall be dissolved without a fifty-five per cent vote of the electors of such county voting on such question.

Amendment: Art. 55, June 25, 1940
(S. L. 1941, p. 587).

TEXT OF ORIGINAL SECTION

The legislative assembly shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines; but no new county shall be organized nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than one thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships, the natural boundaries shall be observed as nearly as may be.

Limitation on Legislature.

This section evidences the intent that the legislatures should not create any counties or locate the county seat by special acts of their own. State ex rel. Ahern v. Anders, 30 ND 572, 152 NW 801.

Withdrawal of Townships.

A petition requesting the withdrawal of six townships from a county containing only twenty-four townships violates this section, and mandamus will not lie to compel the commissioners to withdraw townships in violation of the constitution. State ex rel. Ulander v. County Comrs., 49 ND 151, 190 NW 549.

CHAPTER 11-02

ORGANIZATION OF COUNTIES FROM UNORGANIZED TERRITORY

Section		Section	
11-02-01	What territory may be organized into a county.	11-02-07	County divided into commissioner districts—Election of commissioners—Terms of office.
11-02-02	How territory organized—Petition.	11-02-08	Records to be transcribed.
11-02-03	Duty of governor.	11-02-09	Terms of court.
11-02-04	Temporary county seat located.	11-02-10	Annexed territory part of county.
11-02-05	Officers appointed—Term of office.		
11-02-06	Officers appointed to qualify.		

11-02-01. What territory may be organized into a county.—Any unorganized territory in this state having a population of at least five thousand bona fide inhabitants and comprising an area of not less than twenty-four congressional townships may be organized into a county in the manner set forth in this chapter.

Source: S. L. 1885, ch. 40, § 1; R. C. 1895, § 1823; R. C. 1899, § 1823; S. L. 1903, ch. 64; R. C. 1905, §§ 2297, 2300; S. L. 1907, ch. 63, § 1; C. L. 1913, § 3191; R. C. 1943, § 11-0201.

Collateral References.

Counties—1-9.
14 Am. Jur., Counties, §§ 6-11
20 C. J. S. Counties, §§ 5-41.

Unconstitutional statute, organization sought to be incorporated under as a de facto corporation, 136 ALR 193.

11-02-02. How territory organized—Petition.—Before any unorganized territory may be organized into a county, a written petition therefor signed by at least fifty per cent of the bona fide electors of the territory as determined by the number of votes cast for the office of governor at the preceding general election must be presented to the governor. The petition shall contain the name of the proposed county, describe the boundaries thereof, state that the unorganized territory has a population of at least five thousand bona fide inhabitants, and request the governor to organize the territory into a county under the name stated in the petition.

Source: S. L. 1885, ch. 40, § 1; R. C. 1895, § 1823; R. C. 1899, § 1823; S. L. 1903, ch. 64; R. C. 1905, §§ 2297, 2300; S. L. 1907, ch. 63, § 1; C. L. 1913, § 3191; R. C. 1943, § 11-0202.

designated territory petition the executive for organization, and the executive organizes the county as provided by statute, it has no corporate existence. *Vail v. Town of Amenia*, 4 ND 239, 59 NW 1092.

Corporate Existence.

Until the people residing within the

11-02-03. Duty of governor.—When a petition requesting the governor to organize unorganized territory into a county has been presented to the governor, he shall satisfy himself as to its sufficiency, that the proposed county has the requisite area and number of bona fide inhabitants for a county organization, and that in fixing the boundaries of the proposed county, congressional township lines and natural boundaries have been observed as nearly as may be. If he is satisfied that the foregoing requirements have been complied with, he shall grant the petition and shall proceed at once to complete the organization of the county.

Source: S. L. 1885, ch. 40, § 2; R. C. 1895, § 1824; R. C. 1899, § 1824; S. L. 1903, ch. 64; R. C. 1905, §§ 2298, 2301;

S. L. 1907, ch. 63, § 2; C. L. 1913, § 3192; R. C. 1943, § 11-0203.

11-02-04. Temporary county seat located.—Within thirty days after granting a petition for the organization of a county, the governor by written order shall locate a temporary county seat at the place which the greater number of bona fide residents of such county shall designate by petition to the governor.

Source: S. L. 1885, ch. 40, § 4; R. C. 1895, § 1826; R. C. 1899, § 1826; R. C. 1905, § 2303; S. L. 1907, ch. 63, § 3; C. L. 1913, § 3193; R. C. 1943, § 11-0204.

Cross-Reference.

Permanent location of county seat, see ch. 11-04.

Election Not Authorized.

Location of county seat by election at the first general election held after organization is not allowed where new territory is formed into a county. State ex rel. Ahern v. Anders, 30 ND 572, 152 NW 801.

11-02-05. Officers appointed—Term of office.—Within thirty days after granting a petition for the organization of a county, the governor shall appoint a full set of county officers, including three county commissioners. If there is a vacancy in any office by reason of the failure of any appointee to qualify, the governor shall fill such vacancy. All officers so appointed shall hold their offices until their successors are elected and qualified.

Source: S. L. 1885, ch. 40, § 3; R. C. 1895, § 1825; R. C. 1899, § 1825; S. L. 1903, ch. 64; R. C. 1905, §§ 2299, 2302; S. L. 1907, ch. 63, § 3; C. L. 1913, § 3193; R. C. 1943, § 11-0205.

11-02-06. Officers appointed to qualify.—The county commissioners appointed shall qualify immediately and then shall fix the amounts of the bonds of all officers where the amounts are not fixed by law. All officers appointed shall qualify and enter upon the discharge of their respective duties within thirty days after their appointment.

Source: S. L. 1885, ch. 40, § 20; R. C. 1895, § 2318; S. L. 1907, ch. 63, § 4; C. L. 1895, § 1841; R. C. 1899, § 1841; R. C. 1913, § 3194; R. C. 1943, § 11-0206.

11-02-07. County divided into commissioner districts—Election of commissioners—Terms of office.—The county commissioners appointed under this chapter shall convene immediately after they have qualified, at the place selected as the county seat and shall proceed to the discharge of their duties as a board of county commissioners. The board shall divide the county into three commissioners' districts, which districts shall be numbered from one to three. Three commissioners shall be elected at the next general election, one for each of said districts, one for the term of two years and two for terms of four years, the order of succession to be determined by lot, and thereafter, each commissioner shall be elected for a term of four years.

Source: S. L. 1885, ch. 40, § 22; R. C. 1895, § 1842; R. C. 1899, § 1842; S. L. 1901, ch. 52, § 1; R. C. 1905, § 2319; S. L. 1907, ch. 63, § 5; C. L. 1913, § 3195; R. C. 1943, § 11-0207.

Pol. C. 1877, ch. 21, § 16; R. C. 1895, § 1896; R. C. 1899, § 1896; S. L. 1901, ch. 52, § 3; 1903, ch. 74, § 1; R. C. 1905, § 2390; C. L. 1913, § 3264; S. L. 1937, ch. 120, § 1; R. C. 1943, § 11-0207.

Order of Succession.

The method of determining the order of succession by lots is recognized by the constitution of this state as proper. O'Laughlin v. Carlson, 30 ND 213, 152 NW 675.

11-02-08. Records to be transcribed.—The board of county commissioners of a new county shall cause to be transcribed into the proper books all the records or deeds or other instruments relating to real property in the new county and all other records affecting the property rights of the residents and property owners of such county. The officers of such county shall have the right to examine the records of other counties affecting such property rights, and to transcribe the same. The proper officers of the county in which the original records are found shall certify to the transcribed copies, and such transcribed records shall have the same effect in all respects as original records.

Source: S. L. 1907, ch. 63, § 6; C. L. 1913, § 3196; R. C. 1943, § 11-0208.

11-02-09. Terms of court.—A county organized under this chapter shall constitute a part of the judicial district of which the territory embraced in such county originally was a part. The terms of district court for the new county shall be held at such times as are fixed by the presiding judge until fixed by law.

Source: S. L. 1907, ch. 63, § 7; C. L. 1913, § 3197; R. C. 1943, § 11-0209.

11-02-10. Annexed territory part of county.—The portions of the state not organized into counties, which are annexed to an organized county shall be deemed to be within the limits and a part of the county to which they are annexed for judicial and other purposes.

Source: Pol. C. 1877, ch. 21, § 5; R. C. 1905, § 2322; C. L. 1913, § 3198; R. C. 1895, § 1846; R. C. 1899, § 1846; R. C. 1943, § 11-0210.

CHAPTER 58-01

GENERAL PROVISIONS

Section	Section
58-01-01 "Township" defined.	58-01-03 Conveyance to township—If
58-01-02 Territory in city not subject to provisions of title.	for benefit of inhabitant need not be in township name.

58-01-01. "Township" defined.—Whenever in this title the word "township" is used without any other descriptive word or phrase, a civil township is referred to without regard to the number of congressional townships incorporated therein.

Source: R. C. 1943, § 58-0101.

52 Am. Jur., Towns and Townships, § 2.

Collateral References.
Towns—1.

87 C. J. S. Towns, §§ 1-4.

58-01-02. Territory in city not subject to provisions of title.—Nothing contained in this title shall apply in any way to any part of the state which is embraced within the limits of any incorporated city.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 2676; R. C. 1905, § 3216; C. L. 1907, § 121; R. C. 1895, § 2676; R. C. 1899, § 4272; R. C. 1943, § 58-0102.

58-01-03. Conveyance to township—If for benefit of inhabitant need not be in township name.—Each conveyance of land within the limits of a township made in any manner for the use or benefit of its inhabitants has the same effect as if made to the township by name.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 2539; R. C. 1905, § 3960; C. L. 1907, § 10; R. C. 1895, § 2539; R. C. 1899, § 4085; R. C. 1943, § 58-0103.

CREATION, CONSOLIDATION, DIVISION, AND DISSOLUTION*

Section		Section	
58-02-01	Organization of township — Petition—Election.	58-02-15	Determination of assets and liabilities of territory detached from one civil township and attached to another.
58-02-02	Commissioners report to county auditor.	58-02-16	Determination of net assets of township to which territory is annexed and of annexed territory.
58-02-03	Name of township.	58-02-17	Determination of prorata amount due from annexed territory.
58-02-04	County auditor transmits name and report to state auditor.	58-02-18	Tax levies against territory annexed.
58-02-05	Duty of state auditor when similar names are adopted by different townships.	58-02-19	Division of organized township — Requirements.
58-02-06	First township meeting.	58-02-20	Division made on congressional township lines.
58-02-07	Changing boundary lines of township.	58-02-21	Petition for and notice of application for division—Publication.
58-02-08	Fractional township — Annexing to another township.	58-02-22	Board of county commissioners may establish new township.
58-02-09	Annexing parts of township divided by river from rest of township.	58-02-23	Division of assets and liabilities of the original township.
58-02-10	Division of township in which there are two or more municipalities.	58-02-24	Obligations of original township enforced.
58-02-11	Uniting congressional townships into civil townships.	58-02-25	Dissolution of township—Petition — When considered by supervisors.
58-02-12	Notice to board of supervisors when change is made in township boundaries.	58-02-26	Question of dissolution submitted at annual meeting—Notice.
58-02-13	Obligation to pay taxes assessed or indebtedness incurred prior to township alteration continues.	58-02-27	Vote on question of dissolution — Form of ballot — Result.
58-02-14	Consolidating townships—Majority of supervisors and clerks of townships affected determine amount due.		
Section		Section	
58-02-28	When township dissolved — Disposition of property and records.	58-02-30	Township attached to other assessment district — Levy for payment of township debts.
58-02-29	Personal rights not affected by township dissolution.	58-02-31	Duty of county auditor on dissolution.
		58-02-32	Proof of signatures on petition.

58-02-01. Organization of township—Petition—Election.—If twenty-five percent of the electors who voted for governor in the last general election of a congressional township which has an assessed valuation of more than forty thousand dollars and which contains twenty-five or more legal voters shall petition the board of county commissioners for the organization of the congressional township into a civil township, the board of county commissioners shall then submit the questions whether said township shall be organized to the electors in the congressional township. Thirty days' published notice in at least one newspaper of general circulation in the township shall be given of the election. If a majority of the votes cast approve of organization, the township shall then be organized, and if the petitions filed for organization did not designate a name, the board of county commissioners shall select one.

Source: S. L. 1883, ch. 112, sub. ch. 1, §1; R. C. 1895, §2526; R. C. 1899, §2526; S. L. 1905, ch. 179, §1; R. C. 1905, §2047; C. L. 1913, §4072; R. C. 1943, §58-0201; S. L. 1967, ch. 470, §1.

Collateral Attack on Petition.

Once the county commissioners have found that the petition contains the requisite number of legal voters, the question as to the sufficiency of such petition

is not open to judicial investigation in a mandamus proceeding to compel the calling of an election for school officers in such township. State ex rel. Laird v. Gang, 10 ND 331, 87 NW 5.

Collateral References.

Towns—3.
52 Am. Jur., Towns and Townships, §5.
87 C. J. S. Towns, §8.

CHAPTER 40-02

INCORPORATION OF MUNICIPALITIES IN UNORGANIZED TERRITORY

Section		Section	
40-02-01	Requisites of incorporation as city.	40-02-12	Order of incorporation — Recording — Filing — As evidence.
40-02-02	Census required.		
40-02-03	Survey required.	40-02-13	Procedure in the case of incorporation of city under the commission system of government.
40-02-04	Survey, map, and census subject to examination—Notice.		
40-02-05	Petition for incorporation — Contents—Census and survey to accompany.	40-02-14	Board of county commissioners to establish election precincts.
40-02-06	Board of county commissioners to consider petition.	40-02-15	Division of property and indebtedness between municipality and township.
40-02-07	Notice of election.		
40-02-08	Polling hours at election on question of incorporation.	40-02-16	Arbitration of differences between township and newly organized municipality upon division of property and indebtedness.
40-02-09	Form of ballot.		
40-02-10	Election returns — To whom made — Duty of board of county commissioners.		
40-02-11	Division into districts or wards.		

40-02-01. Requisites of incorporation as city.—Any contiguous territory in this state, not exceeding four square miles in area, not already

included within the corporate limits of any incorporated municipality, may become incorporated as a city whether such territory is located in one or more counties, under the following conditions:

1. If such territory shall have residing therein a population of not less than fifty nor more than five hundred inhabitants, it may become incorporated as a city under the council or modern council form of government;
2. If such territory shall have residing therein a population of not less than five hundred inhabitants, it may become incorporated as a city under the council or modern council form of government, or as a city under the commission system of government.

Source: S. L. 1887, ch. 73, art. 1, § 1; R. C. 1895, § 2108; R. C. 1899, § 2108; S. L. 1905, ch. 62, §§ 1, 4; R. C. 1905, §§ 2632, 2635; S. L. 1907, ch. 45, § 1; 1907, ch. 266, § 1; 1911, ch. 77, § 1; 1911, ch. 314, § 1; 1913, ch. 72, § 1; C. L. 1913, §§ 3552, 3556, 3564a, 3771, 3932; S. L. 1915, ch. 66, § 1; 1921, ch. 31, § 1; 1925 Supp., §§ 3552, 3771; R. C. 1943, § 40-0201; S. L. 1967, ch. 323, § 106.

37 Am. Jur., Municipal Corporations, §§ 7-17.
62 C. J. S. Municipal Corporations, §§ 6-37.

De jure office as condition of a de facto officer, effect on rule as to, of doctrine as to collateral attack on existence of municipal corporation, 99 ALR 314.

Injunction to restrain enforcement of municipal tax upon ground involving attack upon legal existence of municipality, 129 ALR 257.

Quo warranto, power of district or prosecuting attorney to bring action of, attacking existence of municipal corporation, 131 ALR 1219.

Cities Are Creatures of Statute.

Cities are incorporated through general law of the legislature and are mere creatures of the statute. *Waslien v. City of Hillsboro*, 48 ND 1113, 188 NW 738.

Collateral References.

Municipal Corporations 1-22.

40-02-02. Census required.—Prior to the commencement of any proceedings to incorporate territory as a municipality, the persons intending to make the petition for such incorporation shall cause an accurate census of the resident population of such territory to be taken as of some day not more than sixty days previous to the time when the petition is presented to the board of county commissioners as provided in this chapter. Such census shall show the name of every elector and of every head of a family residing within such territory on such day and the number of persons then belonging to such family, and the census shall be verified by the affidavit of the person taking the same.

Source: Pol. C. 1877, ch. 24, § 2; R. C. 1895, § 2345; S. L. 1897, ch. 150, § 1; S. L. 1911, ch. 314, § 2; C. L. 1913, §§ 3841, 3933; R. C. 1943, § 40-0202.

40-02-03. Survey required.—The persons intending to make application for the incorporation of a municipality as provided in this chapter shall cause to be made an accurate survey and map of the territory intended to be embraced within the limits thereof. The survey shall be made by a practical surveyor and shall show the courses and distances of the boundaries and the quantity of land contained therein. The accuracy of such survey and map shall be verified by the affidavit of the surveyor written thereon or annexed thereto.

Source: Pol. C. 1877, ch. 24, § 1; R. C. C. L. 1913, §§ 3840, 3933; R. C. 1943, 1895, § 2344; R. C. 1899, § 2344; R. C. § 40-0203.
1905, § 2843; S. L. 1911, ch. 314, § 2;

40-02-04. Survey, map, and census subject to examination—Notice.
—The survey, map, and census required under the provisions of this chapter, when completed and verified, shall be left for a period of not less than thirty days at some convenient place within the territory described therein for examination by those having any interest in the application for incorporation. There shall be attached to such survey, map, and census a notice as to the purpose of the map, survey, and census and that an application by petition for incorporation is to be made and will be presented for hearing to the board of county commissioners at a time certain as specified in the notice. Copies of such notice, together with a statement showing where the survey, map, and census may be examined, shall be posted for at least thirty days in three conspicuous and public places within the territory to be affected.

Source: Pol. C. 1877, ch. 24, § 3; R. C. State ex rel. Brunette v. Sutton, 71 ND 1895, § 2346; R. C. 1899, § 2346; R. C. 530, 3 NW 2d 106.
1905, § 2843; S. L. 1911, ch. 314, § 2;
C. L. 1913, §§ 3842, 3933; R. C. 1943, § 40-0204.

Failure to Give Notice.

Where notice is not given in conformance with this section the board acquires no jurisdiction in the matter.

Theory of Statute.

The theory of this statute is that every person interested shall have a right to know what is being attempted so he may be heard respecting anything that is done. State ex rel. Brunette v. Sutton, 71 ND 530, 3 NW 2d 106.

40-02-05. Petition for incorporation—Contents—Census and survey to accompany.—A petition for the incorporation of a municipality under this chapter shall be addressed to the board of county commissioners of the county in which the proposed municipality is located and if such municipality is located in more than one county, to the board of county commissioners of the county wherein the greater part of the territory is situated, and shall be signed by not less than one-third of the electors residing within the territory described in such petition. Such petition shall show:

1. The boundaries of the proposed municipality;
2. The number of inhabitants residing within such boundaries;
3. The name of the proposed municipality, which shall be different from that of every other municipality in this state;
4. A prayer that the question of incorporating the territory described in the petition as a city under the council form of government or a city under the commission system of government, as the case may be, be submitted to the qualified voters residing within such territory.

The petition shall be filed in the office of the county auditor, accompanied by a verified copy of the census required under this chapter and by a duplicate map of the survey of the proposed municipality, and shall be presented to the board of county commissioners at the time

indicated in the notice described in section 40-02-04 or as soon thereafter as the board can receive and consider the same.

Source: Pol. C. 1877, ch. 24, §§ 4, 5; 1911, ch. 314, § 3; C. L. 1913, §§ 3556, R. C. 1895, §§ 2347, 2348; R. C. 1899, §§ 3843, 3844, 3934; R. C. 1943, § 40-0205; §§ 2347, 2348; S. L. 1905, ch. 62, § 4; S. L. 1967, ch. 323, § 107. R. C. 1905, §§ 2635, 2846, 2847; S. L.

40-02-06. Board of county commissioners to consider petition.—Before hearing the petition, the board of county commissioners shall require proof, either by affidavit or by oral examination of witnesses before it, that the survey, map, and census were subject to examination in the manner and for the period required by this chapter. If the board is satisfied that the provisions of this chapter have been fully complied with, it shall make an order fixing the time and the places within the boundaries of the proposed municipality at which an election may be held to determine the question of incorporation as prayed for in the petition. If the territory described in the petition is located in more than one county, the board shall designate a separate election place in each county in which any part of the territory described in the petition is situated. The board shall name the persons to act as judges of the election in each such election place.

Source: Pol. C. 1877, ch. 24, § 5; R. C. 1895, § 2348; R. C. 1899, § 2348; R. C. 1905, § 2847; S. L. 1911, ch. 314, § 3; C. L. 1913, §§ 3844, 3934; R. C. 1943, § 40-0206.

Duty to Order Election Mandatory.

If the citizens affected by any proposed incorporation comply with the statutory requirements and show the board that the same have been met, the board must order an election to enable the electors to vote upon the question,

and if the incorporation is approved by a majority of those voting, the board must approve of and declare the incorporation. State ex rel. Brunette v. Sutton, 71 ND 530, 3 NW 2d 106.

Lack of Jurisdiction.

Where notice is not given in conformance with section 40-01-04, the board acquires no jurisdiction over the subject matter. State ex rel. Brunette v. Sutton, 71 ND 530, 3 NW 2d 106.

40-02-07. Notice of election.—The board of county commissioners to which a petition is addressed under this chapter shall give notice of the election to be held to determine whether or not the municipality described in the petition shall be organized. Such notice shall be given by publication of the same in one issue of a newspaper published within the territory described in the petition, and such publication shall be made at least ten days prior to the date set for such election. If no newspaper is published within such territory, such notice shall be published in the official county newspaper.

Source: Pol. C. 1877, ch. 24, § 6; R. C. 1895, § 2349; R. C. 1899, § 2349; R. C. 1905, § 2848; S. L. 1911, ch. 314, § 3; C. L. 1913, §§ 3845, 3934; R. C. 1943, § 40-0207; S. L. 1967, ch. 158, § 91.

Collateral References.

Elections—39-42; Municipal Corporations—12(6, 8).

25 Am. Jur. 2d, Elections, §§ 183-199.

29 C. J. S. Elections, §§ 71-75; 62 C. J. S. Municipal Corporations, §§ 19, 21.

Comment note: Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 ALR 661.

Special election, validity of, as affected by publication or dissemination of matter or information extrinsic to the

question as submitted, regarding nature of election as a punishable offense, 134 ALR 1257.

40-02-08. Polling hours at election on question of incorporation.—At the election called to vote on the question of incorporation of a municipality under this chapter, the polls shall be opened at nine o'clock a.m. on the day specified in the notice and shall be kept open until seven o'clock p.m. At such election the voters first shall proceed to the election of three inspectors, who, after being chosen and qualified and one of their number elected clerk, without delay shall proclaim that the polls are open.

Source: Pol. C. 1877, ch. 24, §§ 7, 8; R. C. 1895, §§ 2350, 2351; R. C. 1899, §§ 2350, 2351; R. C. 1905, §§ 2349, 2350; C. L. 1913, §§ 3846, 3847; S. L. 1937, ch. 181, § 1; R. C. 1943, § 40-0208.

Late Opening of Polls.

Opening the polls at a later hour than fixed by statute is an irregularity that does not render the election void, in the absence of a showing of fraud or prejudice to qualified electors. *Williams v. Sherwood*, 51 ND 520, 200 NW 782.

40-02-09. Form of ballot.—The ballots to be used at an election to pass upon the question of the organization of a municipality under the provisions of this chapter shall be in substantially the following form:

Shall a _____ (city under the council form of government, or city under the commission system of government, as the case may be) be organized out of the following described territory
 _____ (describe territory involved)?

Yes ☐

No ☐

Source: Pol. C. 1877, ch. 24, § 9; S. L. 1893, ch. 129, § 1; R. C. 1895, § 2352; R. C. 1899, § 2352; R. C. 1905, § 2851; C. L. 1913, § 3848; R. C. 1943, § 40-0209; S. L. 1967, ch. 323, § 108.

40-02-10. Election returns—To whom made—Duty of board of county commissioners.—The election officials acting in each place in which votes are cast in an election held under this chapter shall return to the board of county commissioners which ordered the election a verified statement of the results of the election showing the number of votes cast for and against incorporation to their voting place. Such returns shall be verified by the affidavit of the election officials. The returns shall be canvassed by the board of county commissioners, and the results of the canvass and of the election shall be entered upon the minutes of the proceedings of such board. If a majority of the votes cast at the election favored incorporation, the board shall make an order declaring that the territory described in the petition has been incorporated as a city under the council form of government or as a city under the commission system of government, as the case may be, by the name described in the petition, stating such name, and shall cause such order to be entered in the minutes of its proceedings. If

the territory is located in more than one county, a certified copy of such order shall be submitted immediately to each of the other counties within which a portion of the territory described in the order is situated. The auditor of each county to which a certified copy of the order is submitted shall make a record thereof in the minutes of the board of county commissioners of such county.

Source: Pol. C. 1877, ch. 24, § 9; S. L. 1911, ch. 314, § 4; C. L. 1913, §§ 3848, 1893, ch. 129, § 1; R. C. 1895, § 2352; R. 3935; R. C. 1943, § 40-0210; S. L. 1967, C. 1899, § 2352; R. C. 1905, § 2851; S. L. ch. 323, § 109.

40-02-11. Division into districts or wards.—After the return of the election provided for in this chapter, if a majority of the votes cast at such election favored incorporation as a municipality, the board of county commissioners which ordered the election shall proceed to divide the municipality into districts or wards as follows:

1. If the territory has been incorporated as a city under the council form of government, it shall not be divided into wards unless it has more than six hundred inhabitants, and if it has more than six hundred inhabitants, one ward shall be formed for each two aldermen to which the city is entitled. In cities of more than fifteen thousand inhabitants, however, the number of wards shall be limited to seven originally, and such number may be increased thereafter as provided in this title;
2. If the territory has been incorporated as a city under the commission system of government, it shall be divided into not less than three nor more than seven wards.

Each district or ward shall be formed from contiguous territory, and all districts or wards shall be numbered consecutively and shall have, as nearly as practicable, the same number of inhabitants. After the election of aldermen or commissioners, as the case may be, it shall thereafter be the duty of the governing body of the city to form or establish wards and election districts pursuant to law.

Source: Pol. C. 1877, ch. 24, § 10; R. C. 1895, § 2353; R. C. 1899, § 2353; R. C. 1905, § 2852; C. L. 1913, § 3849; R. C. 1943, § 40-0211; S. L. 1967, ch. 158, § 92; 1967, ch. 323, § 110.

Note.

Section 40-02-11 was amended twice during the Fortieth Legislative Session, once by section 92 of chapter 158, 1967 S. L., and once by section 110 of chapter 323, 1967 S. L. The amendments con-

tained in both chapters deleted provisions referring to villages and were identical in this respect; however, chapter 158 further amended to add the last sentence. Since the provisions of chapter 158 appear to carry out the purposes of both amendments, and the amendments are reconcilable, the provisions of chapter 158 are printed above. See section 1-02-09.1 pertaining to multiple amendments to the same statute.

40-02-12. Order of incorporation—Recording—Filing—As evidence.—An order or incorporation of a city under the council form of government, under the provisions of this chapter, as made by the board of county commissioners to which the petition for incorporation is addressed, shall be conclusive evidence of the incorporation of the ter-

ritory described in the order in all suits by or against the municipality described therein. The board shall cause a certified copy of such order to be filed for record in the office of the register of deeds of each county affected and a certified copy thereof to be filed in the office of the secretary of state.

Source: S. L. 1911, ch. 314, § 4; C. L. 1913, § 3935; R. C. 1943, § 40-0212; S. L. 1967, ch. 323, § 111.

invalid because the order of the board of county commissioners declaring the result of the election misdescribed the territory. *Billings School District v. Loma Special School District*, 56 ND 751, 219 NW 336.

Decision under Prior Law.

The incorporation of a village is not

40-02-13. Procedure in the case of incorporation of city under the commission system of government.—If the municipality organized under the provisions of this chapter is a city under the commission system of government, the board of county commissioners shall make returns to the secretary of state, and a patent shall be issued by the governor in accordance with the applicable provisions of chapter 40-04, and with like effect.

Source: S. L. 1907, ch. 45, § 11; 1911, ch. 77, § 11; C. L. 1913, § 3781; R. C. 1943, § 40-0213.

40-02-14. Board of county commissioners to establish election precincts.—The territory embraced within the boundaries of a municipality organized under this chapter shall be divided by the board of county commissioners which made the order of incorporation into election precincts. If the municipality is situated in more than one county, there shall be at least as many election precincts as there are portions of counties embraced within such municipality.

Source: S. L. 1911, ch. 314, § 5; C. L. 1913, § 3936; R. C. 1943, § 40-0214.

40-02-15. Division of property and indebtedness between municipality and township.—If a municipality is organized under the provisions of this chapter from territory which has been a part of a civil township, any property owned, and any debts owed, by the township prior to the separation shall be divided between the municipality and the township in the proportion which the valuation of the property in the municipality bears to the valuation of the property in the township. The valuations used shall be the valuations as equalized by the board of county commissioners at the last equalization previous to the separation. Real estate which is owned jointly shall belong to the municipality if it is situated therein, and in such case, the municipality shall pay to the township its proportion of the value thereof and shall assume its just proportion of any indebtedness thereon.

Source: S. L. 1907, ch. 264, § 1; C. L. 1913, § 3902; R. C. 1943, § 40-0215.

of indebtedness and property in the event of division, annexation, or consolidation of a municipal corporation. *Village of North Fargo v. City of Fargo*, 49 ND 597, 192 NW 977.

Purpose of Statute.

This section contemplates equalization



40-02-16. Arbitration of differences between township and newly organized municipality upon division of property and indebtedness.—If the officers of a township and of a municipality which has been organized from territory situated therein cannot agree upon the valuation of any real estate, or of any indivisible property which is held jointly, or upon the just apportionment of the joint indebtedness, the officers of the township or municipality, upon five days' notice of the time and place, may apply to the county judge for arbitration of such differences. Thereupon, the county judge shall appoint three freeholders of the county, not residents or taxpayers of the municipality or township involved, to act as arbitrators. After being duly sworn to perform the duties imposed upon them, the arbitrators shall view and appraise the property and fix the valuation thereof for the purpose of making the division. If the property to be divided is personal property and no satisfactory arrangement can be made otherwise, it shall be sold at public auction to the highest bidder, and the municipality and township may bid at such sale.

Source: S. L. 1907, ch. 264, § 1; C. L. 1913, § 3902; R. C. 1943, § 40-0216.

CHAPTER 11-08

COUNTY CONSOLIDATED OFFICE FORM OF COUNTY GOVERNMENT

Section		Section	
11-08-01	Who may adopt county consolidated office form of government.	11-08-08	When appointment of officers made—Qualification.
11-08-02	Petition to board of county commissioners—Submitted to electors.	11-08-09	Compensation of officers.
11-08-03	Election—Notice—How conducted—Canvass—Return.	11-08-10	Board may appoint officers of adjoining county—Term of office—Compensation.
11-08-04	Ballot—Form.	11-08-11	Powers and duties of county auditor.
11-08-05	Vote required—Change effective when—When elective officers retired.	11-08-12	Powers and duties of board of county commissioners.
11-08-06	Officers in county adopting consolidated office form of government.	11-08-13	Powers and duties of other officers.
11-08-07	Appointive officers—County commissioners elected—Terms of office—How vacancy filled.	11-08-14	Deputies and employees—Appointment—Compensation—Terms.
		11-08-15	Removal of officers.

CHAPTER 11-08—COUNTY CONSOLIDATED OFFICE FORM
OF COUNTY GOVERNMENT

1973 SUPPLEMENT

Section		Section	
11-08-02	Board of county commissioners to submit plan to electorate.	11-08-05	Vote required—Change effective when—When elective officers retired.
11-08-02.1	Board of county commissioners may submit plan.	11-08-06	Officers in county adopting consolidated office form of government.

COUNTIES

CHAPTER 11-09

COUNTY MANAGERSHIP

Section		Section	
11-09-01	County manager government—Forms.	11-09-21	Designation of depository in lieu of appointment of treasurer.
11-09-02	Petition—Question submitted to electors.	11-09-22	County judge—Election—Duties.
11-09-03	Board of county commissioners may submit question without petition.	11-09-23	Clerk of the district court—Who shall act.
11-09-04	Notice of election—How election held—Canvass—Return.	11-09-24	County superintendent of schools—Election—Duties.
11-09-05	Ballot for submitting question of the adoption of county manager form of government.	11-09-25	Register of deeds—Who to act.
11-09-06	Ballot for submitting question of adopting the short form of county managership.	11-09-26	Constable—Office abolished—Who to perform duties.
11-09-07	Vote required—When form of government goes into effect—When official in office retired.	11-09-27	Coroner—Office abolished—Who to perform duties.
11-09-08	Board of county commissioners—Election—Term of office—Vacancies.	11-09-28	County justice—Office abolished—Who to perform duties.
11-09-09	Powers of board of county commissioners—Failure of witness to obey order of board is a misdemeanor.	11-09-29	Public administrator—Office abolished—Who to perform duties.
11-09-10	Appointment of county manager—Tenure of office—Compensation.	11-09-30	Surveyor—Office abolished—Who to perform duties.
11-09-11	Manager and officers attend meetings of board of county commissioners.	11-09-31	When not clear who is to exercise power, board of county commissioners designate officer.
11-09-12	Powers and duties of county manager.	11-09-32	Appointment of subordinates—Terms of office.
11-09-13	Removal of county manager.	11-09-33	Removal of subordinate officers and employees.
11-09-14	Administrative activities, responsibility of county manager.	11-09-34	Bonds of county officers.
11-09-15	Administrative activities assigned to departments in county adopting county manager form of government.	11-09-35	Schedule of compensation.
11-09-16	Directors of departments appointed.	11-09-36	Salary of subordinates—Fees paid over to treasurer.
11-09-17	Auditor—Who to act.	11-09-37	County officers and employees to pay public moneys to treasurer.
11-09-18	State's attorney—Appointment—Powers—Duties.	11-09-38	Board of county commissioners not to interfere in appointments or removals—Penalty.
11-09-19	Sheriff—Election—Appointment—Duties—Powers.	11-09-39	Preparation and submission of the budget.
11-09-20	Treasurer—Who to perform functions.	11-09-40	Finances—Administration.
		11-09-41	No money drawn from treasury unless in pursuance of appropriation—Accounts of appropriations.
		11-09-42	Reports of financial officer to board of county commissioners.
		11-09-43	Books of officers, manager, director of finance audited.

Section		Section	
11-09-44	Purchasing agent—Powers and duties—Supplies purchased on bids—Sale of supplies.	11-09-46	Public welfare—Who in charge—Duties.
11-09-45	Public works—Who in charge—Duties.	11-09-47	Interest in contracts by officers and employees prohibited.
		11-09-48	Election as to retention of plan.

CHAPTER 11-09—COUNTY MANAGERSHIP

1973 SUPPLEMEN

Section		Section	
11-09-01	County manager government—Forms.	11-09-10.1	Election of county manager—Tenure of office—Compensation—Vacancy—Removal—Recall.
11-09-02	Board of county commissioners to submit plan to electorate.	11-09-11	Manager and officers attend meetings of board of county commissioners.
11-09-03	Board of county commissioners may submit plan.	11-09-12	Powers and duties of county manager.
11-09-05	Ballot for submitting question of the adoption of one of the county manager forms of government.	11-09-13	Removal of an appointed county manager.
11-09-07	Vote required—When form of government goes into effect—When official in office retired.	11-09-15	Administrative activities assigned to departments in county adopting county manager form of government.
11-09-08	Board of county commissioners—Election—Term of office—Vacancies.	11-09-16	Directors of departments appointed.
11-09-09	Powers of board of county commissioners—Failure of witness to obey order of board is a misdemeanor.	11-09-17	Auditor—Who to act.
11-09-10	Appointment of county manager—Tenure of office—Compensation.	11-09-18	State's attorney—Appointment—Powers—Duties.
		11-09-19	Sheriff—Election—Appointment—Duties—Powers.
		11-09-20	Treasurer—Who to perform functions.
Section		Section	
11-09-21	Designation of depository in lieu of appointment of treasurer.	11-09-34	Bonds of county officers.
11-09-22	County judge—Election or appointment—Duties.	11-09-35	Schedule of compensation.
11-09-23	Clerk of the district court—Who shall act.	11-09-38	Board of county commissioners not to interfere in appointments or removals—Penalty.
11-09-24	County superintendent of schools—Election or appointment—Duties.	11-09-39	Preparation and submission of the budget.
11-09-25	Register of deeds—Who to act.	11-09-40	Finances—Administration.
11-09-26	Constable—Office abolished—Who to perform duties.	11-09-42	Reports of financial officer to board of county commissioners.
11-09-27	Coroner—Office abolished—Who to perform duties.	11-09-43	Books of officers, manager, director of finance audited.
11-09-29	Public administrator—Office abolished—Who to perform duties.	11-09-44	Purchasing agent—Powers and duties—Supplies purchased on bids—Sale of supplies.
11-09-30	Surveyor—Office abolished—Who to perform duties.	11-09-45	Public works—Who in charge—Duties.
11-09-31	When not clear who is to exercise power, board of county commissioners designate officer.	11-09-46	Public welfare—Who in charge—Duties.
11-09-32	Appointment of subordinates—Terms of office.	11-09-47	Interest in contracts by officers and employees prohibited.
11-09-33	Removal of subordinate officers and employees.	11-09-48	Election as to retention of plan.

11-10-01

COUNTIES

CHAPTER 11-10

GENERAL PROVISIONS

Section		Section	
11-10-01	County a corporate body—Powers.	11-10-10.4	Compensation and expenses of county commissioners for 1949, 1950, 1951, and 1952—Repealed.
11-10-02	Number and election of officers.	11-10-11	Appointment and salary of deputies and clerks.
11-10-02.1	Employment of county surveyors.	11-10-12	Deputy county officials—Bonds.
11-10-03	Additional justices and constables for unorganized townships—Repealed.	11-10-13	Oath of deputies.
11-10-04	Officer must be qualified elector—Exceptions.	11-10-14	Fees received by county officers turned over to county treasurer.
11-10-05	When terms of county officers commence—When officers qualify.	11-10-15	Mileage of officials.
11-10-06	Bonds of county officers.	11-10-16	Official must file statement to claim mileage.
11-10-07	Bonds required in counties where offices consolidated.	11-10-17	Officers to make settlement.
11-10-08	Bonds of county officers to be recorded.	11-10-18	Penalty for failure to render or settle accounts.
11-10-09	Oath of county officers.	11-10-19	Use of photography in making county records.
11-10-10	Salaries of county officers.	11-10-20	Board of county commissioners to provide offices, courtroom, jail—Where public records kept.
11-10-10.1	Commissioners may collect mileage for daily travel between place of residence and county seat or in lieu thereof certain other expenses—Repealed.	11-10-21	Committee to purchase certain supplies for county.
11-10-10.2	Salaries for county officers for 1953, 1954, and 1955—Repealed.	11-10-22	Unlawful for officer to purchase county warrant or evidence of debt—Penalty.
11-10-10.3	Salaries of county superintendents of schools for 1947, 1948, 1949, and 1950—Repealed.	11-10-23	Fee bill to be posted—Penalty.

CHAPTER 11-10—GENERAL PROVISIONS

1973 SUPPLEMENT

Section		Section	
11-10-02	Number and election of officers.	11-10-19.1	Use of photography in making county records.
11-10-06	Bonds of county officers.	11-10-20	Board of county commissioners to provide offices, courtroom, jail—Where public records kept—Authorization for central filing of documents of register of deeds, clerk of district court, and county judge.
11-10-10	Salaries of county officers.		
11-10-10.1	Legislative intent in regard to county salaries.		
11-10-10.2	Salary of clerk of the district court.		
11-10-11	Appointment and salary of deputies and clerks.		

CHAPTER 11-11

BOARD OF COUNTY COMMISSIONERS

Section		Section	
11-11-01	Number of county commissioners.	11-11-26	When board shall advertise for bids.
11-11-02	Commissioner must be resident of district.	11-11-27	Contents of advertisement—When bids may be opened—Lowest bidder accepted.
11-11-03	Term of office of commissioners.	11-11-28	Bid must be accompanied by certified check.
11-11-04	Specific provisions to be contained in bond of county commissioners.	11-11-29	Contract—Form—Contents—Majority vote necessary—When payment made.
11-11-05	Meetings of board—Time and place.	11-11-30	When contracts for furnishing election supplies let.
11-11-06	Sessions of board to be public—County matters heard at session only.	11-11-31	Construction of public buildings—Bond of contractor.
11-11-07	Quorum—Tie vote defers decision.	11-11-32	Commissioners may employ architect—Compensation.
11-11-08	Chairman—Election—Duties.	11-11-33	Special funds may be transferred.
11-11-09	County seal.	11-11-34	Auditing building accounts of board of county commissioners.
11-11-10	Power of board to preserve order—Fines—Collection.	11-11-35	Board to keep records of proceedings.
11-11-11	General duties of board of county commissioners.	11-11-36	Order of business.
11-11-12	Board of county commissioners to provide courts with supplies and attendants.	11-11-37	Proceedings of board of county commissioners to be published in official newspaper—When published.
11-11-13	Board to ascertain amount of redemption money.	11-11-38	Proceedings of county commissioners—Copies received as evidence.
11-11-14	Powers of board of county commissioners.	11-11-39	Appeal from decision of board by person aggrieved—Bond.
11-11-15	Board may obtain copies of field notes and plats made by United States government.	11-11-40	Appeal from decision of board by county by state's attorney on demand.
11-11-16	Board has power to erect, repair, and maintain buildings from current revenue.	11-11-41	Time for appeal—Notice—Transcript of proceedings.
11-11-17	Board of county commissioners may supervise the building or repairing of roads, bridges, and property of the county—Compensation.	11-11-42	When appeal filed—When tried.
11-11-18	Board to submit extraordinary outlay to vote.	11-11-43	Appeals docketed and tried de novo.
11-11-19	When commissioners may purchase land without election.	11-11-44	District court may enter final judgment on appeal—Enforcement.
11-11-20	Notice of election on question of extraordinary expenditure.	11-11-45	Judgments against counties—Power of board of county commissioners.
11-11-21	Proposition to tax must accompany question submitted.	11-11-46	Payment of judgment obtained by state or an agency thereof against county—Duty of county commissioners and auditor.
11-11-22	Vote necessary—How tax levied and collected.	11-11-47	Tax is paid into judgment payment fund.
11-11-23	Record of vote—Board cannot rescind.	11-11-48	Property in county not subject to seizure for judgment.
11-11-24	Limitation on tax levy for extraordinary expenditure.	11-11-49	Board may offer reward.
11-11-25	Money applied only to expenditure for which raised.	11-11-50	Ex-servicemen's room in courthouses.
		11-11-51	Petitions to board of county commissioners—Qualifications of signers.
		11-11-52	Board may provide room for historical society.
		11-11-53	Appropriation for historical works.
		11-11-54	Nonprofit fair corporations—Receipt of real or personal property for fair purposes.

*Only §§ 11-11-14 and 11-11-56 are reproduced

CHAPTER 11-11—BOARD OF COUNTY COMMISSIONERS

1973 SUPPLEMENT

Section		Section	
11-11-02	Commissioner must be resident of district—Exceptions.	11-11-53.1	Donation of historical artifacts.
11-11-14	Powers of board of county commissioners.	11-11-55	County may agree to make improvements on private roads — Costs of improvements to constitute lien on real estate.
11-11-25.1	Disposition of unexpended and unencumbered county taxes levied for a specific purpose.	11-11-56	Comprehensive health planning by counties and county funding of area-wide comprehensive health planning.
11-11-28	Bid must be accompanied by a bond.	11-11-57	Counties may cooperate in predatory animal and injurious rodent control.
11-11-37	Proceedings of board of county commissioners to be published in official newspaper—When published.	11-11-57.1	Funds available for predatory control.
11-11-49	Board may offer reward.		
11-11-53	Appropriation for historical works — Authorization of mill levy—Approval of state historical society and attorney general.		

11-11-14. Powers of board of county commissioners.—The board of county commissioners shall have the following powers:

1. To institute and prosecute civil actions for and on behalf of the county and in its name;
2. To make all orders respecting property of the county;
3. To levy a tax not exceeding the amount authorized by law;
4. To liquidate indebtedness of the county;
5. To construct and repair bridges and to open, lay out, vacate, and change highways in the cases provided by law. But the board may not contract for the construction of bridges costing more than one hundred dollars without first complying with the provision of chapter 24-08 of the title Highways, Bridges, and Ferries;
6. To establish election precincts in the county in areas outside the boundaries of incorporated cities except as provided in chapter 16-09; 1073 SUPPLEMENT
7. To appoint the inspectors of election in unorganized townships;
8. To equalize the assessments of the county in the manner provided by law;
9. To furnish to the county officers the necessary telephone, postage, telephone and telegraph tolls, and all other things necessary and incidental to the performance of the duties of their respective offices to be paid out of the county treasury;
10. To furnish a fireproof safe in which to keep all the books, records, vouchers, and papers pertaining to the business of the board;
11. To dispose of property of the county in the manner provided in chapter 11-27;
12. To purchase lands in lieu of those sold;
13. To grant to any person the right of way for the erection of telephone lines, electric light systems, or gas or oil pipeline systems over or upon public grounds, county streets, roads, or highways; and 1103 SUPPLEMENT
14. To establish a garbage and trash collection system encompassing all or any part of the territory of the county, except such territory as is included within the boundaries of any incorporated city. The words "garbage and trash collection system" shall include the operation and maintenance of one or more sanitary landfill sites, or other types of processing sites for the disposal of trash and garbage. The board may operate such system in cooperation with any one or more political subdivisions in accordance with the provisions of chapter 54-40. The board may borrow money by issuing certificates of indebtedness, repayable from fees or special assessments, or both, which may be charged to the proper parcels of land or to persons receiving the direct benefits of the garbage and trash collection system, or repayable in such other manner as may be provided by law, in order to purchase the initial equipment and land necessary for operation of the system. If the board of county commissioners resolves to establish such a system, the expenses of establishing, operating, and maintaining it may be financed by fees charged to persons receiving direct benefits or by special assessment against the parcels of land properly charged therewith, or by both such fees and assessments. The assessment may be made, published, altered, appealed from, and confirmed under the procedures set forth in chapter 11-28.1;
15. To do and perform such other duties as are or may be prescribed by law; and
16. To maintain, in its discretion, all public roads and private highways and roads that are being used as part of regularly scheduled public school bus routes.

Source: N.D.G.C.; S. L. 1967, ch. 158, § 3; 1969, ch. 208, § 1; 1971, ch. 123, §§ 1, 2; 1973, ch. 89, § 1.

Appeal of Decision.

Neither summons nor complaint is necessary to effect an appeal from decision of board of county commissioners denying an application for abatement or refund of taxes. Appeal of Johnson, 173 NW 2d 475.

Source: Pol. C. 1877, ch. 21, §§ 28, 29; R. C. 1895, § 1905; R. C. 1899, § 1905; R. C. 1905, § 2399; C. L. 1913, § 3273; R. C. 1943, § 11-1114.

Pol. C. 1877, ch. 21, § 29; R. C. 1895, § 1906; S. L. 1899, ch. 59, § 1; R. C. 1899, § 1906; R. C. 1905, § 2400; S. L. 1911, ch. 115; C. L. 1913, § 3275; R. C. 1943, § 11-1114.

S. L. 1907, ch. 67, § 1; C. L. 1913, § 3274; S. L. 1937, ch. 123, § 1; R. C. 1943, § 11-1114; S. L. 1955, ch. 112; 1957 Supp., § 11-1114.

Location of Roads.

County commissioners may change the location of a road built with general funds of the county. Huber v. Miller, 101 NW 2d 136.

Use of Tax Levy.

When the electors of a county have authorized a county road program together with a proposed tax levy the county commissioners cannot use the proceeds of the levy for any other purpose. Huber v. Miller, 101 NW 2d 136.

1973 SUPPLEMENT

Cross-References.

Administration of oaths by county commissioners, see § 44-05-01.

Appointment of board of drainage commissioners, see § 61-21-03.

Appointment of commissioner of noxious weeds, see § 63-02-01.

Appropriation of money to prevent spread of tuberculosis, see § 23-07-20.

Bridges, procedure for construction, see §§ 24-08-01 to 24-08-06.

Clerical help for soil conservation district supervisors, see § 4-22-23.1.

Duties relating to county agent, see §§ 4-08-01 to 4-08-07.

Election precincts, how formed, see § 16-09-01.

General duties of board of county commissioners, see § 11-11-11.

Licensing retail sale of liquor, see § 5-03-03.

Mill levy and contract by county for fire protection of unorganized townships, see § 18-06-11.

Opening and vacating highways, see §§ 24-07-01 to 24-07-34.

Poor relief, duties relating to, see § 50-04-01.

Power to appoint county safety council or director, see § 23-13-11.

Sale by board of county commissioners validated, see § 1-08-06.

11-11-56. Comprehensive health planning by counties and county funding of areawide comprehensive health planning.—Any county may engage in comprehensive health planning and may appropriate funds to an areawide comprehensive health planning organization organized and approved under provisions of the state plan for comprehensive health planning, whether such organization be a public agency or private corporation.

Source: S. L. 1971, ch. 126, § 1.

NORTH DAKOTA CONSTITUTION, Art. X, §168

Section 168. All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties, to be affected thereby at a general election and be adopted by a majority of all the legal votes cast in each county at such election; and in case any portion of an organized county is stricken off and added to another, the county to which such portion is added shall assume and be holden for an equitable proportion of the indebtedness of the county so reduced.

Majority Vote.

A majority of the votes cast on the question of changing county boundaries

is sufficient. State ex rel. McCue v. Blaisdell, 18 ND 31, 119 NW 360.

CHAPTER 11-03

DIVISION OF COUNTIES

Section		Section	
11-03-01	Division of counties—Electors' petition—Election held.	11-03-11	Indebtedness of new county to original county—How and when determined.
11-03-02	Petition—Contents—Signers necessary.	11-03-12	Indebtedness of new county to original county to be paid in bonds.
11-03-03	Notice of election—Canvass and return of votes cast.	11-03-13	Issuance of bonds—Classification—Exchange by original county.
11-03-04	Ballot—Form.	11-03-14	County treasurer to keep bond register.
11-03-05	Affirmative vote necessary—Notice to secretary of state—Notice to governor.	11-03-15	Commissioners of new county to issue bonds in denominations required by original county—Exception—Delivery.
11-03-06	Governor to appoint county commissioners—When county deemed in existence.	11-03-16	Tax levy by new county for payment of bonds.
11-03-07	Temporary county seat, how located.	11-03-17	Tax collected for payment of bonds must be used for that purpose—Use of surplus.
11-03-08	Board of county commissioners to appoint county officers—Exception.		
11-03-09	Division of county into commissioners' districts—Terms of office of commissioners first elected.		
11-03-10	Records to be transcribed.		
Section		Section	
11-03-18	Payment to new county when public funds of original county exceed its indebtedness.	11-03-23	Original county cannot collect revenue in new county.
11-03-19	Special funds belonging to taxing districts within new county—Delivery—Distribution.	11-03-24	County judicial subdivision of what district.
11-03-20	Commissioners of original county to fill vacancies and redistrict county.	11-03-25	Judges to appoint term of district court in new county.
11-03-21	School and road districts re-numbered and renamed.	11-03-26	Writs, bonds, and recognizances issued from new county.
11-03-22	Validity of bonds issued by school district not affected by division.	11-03-27	Fees of county commissioners.
		11-03-28	Elections governed by general election law.

11-03-01. Division of counties—Electors' petition—Election held.—Whenever it is desired to form a new county out of one or more of the then existing counties, a petition conforming to the provisions of this chapter shall be presented to the board of county commissioners of each county to be affected by the division. If it appears to such boards of county commissioners that a new county can be constitutionally formed, they shall make the necessary orders to provide for the submission at the next general election of the question of the formation of such new county to the qualified electors of the counties to be affected.

Source: S. L. 1887, ch. 38, § 1; R. C. 1895, § 1854; R. C. 1899, § 1854; R. C. 1905, § 2329; S. L. 1907, ch. 60, § 1; C. L. 1913, § 3205; R. C. 1943, § 11-0301.

Cross-Reference.

Changing county lines, see N. D. Const., §§ 167, 168.

Conflicting Petitions.

The electors of a county have the right to vote upon all petitions relating to county division which conform to the statute even though conflicting petitions have been presented for action at the same election. *State ex rel. Steel v. Fabrick*, 17 ND 532, 117 NW 860.

Destruction of Existing Counties.

There is doubt as to whether this section applies to a merger and destruction of existing counties, and the creation of a new county consisting of the territory of the counties destroyed. *State ex rel. Ulander v. Burke & Renville Counties*, 49 ND 151, 190 NW 549.

Challenging acts or proceedings by which its boundaries are affected, right of county as to, 86 ALR 1373.

Legal Existence.

A new county has no existence as a governmental agency of the state until the commissioners are qualified. *Murray v. Davis*, 21 ND 64, 128 NW 305.

Legislative Question.

The question of the creation and division of counties in purely a legislative one, unless regulated by the constitution. The common law has no application thereto. *Murray v. Davis*, 21 ND 64, 128 NW 305.

Statutory Proceedings.

The proceedings for the division of a county and for the organization of new counties are strictly statutory and no intendment can be indulged in their favor. *State ex rel. Minehan v. Meyers*, 19 ND 804, 124 NW 701.

Collateral References.

Counties—12-14.

14 Am. Jur., Counties, §§ 6-10.

20 C. J. S. Counties, §§ 23-29.

Unconstitutional statute, organization sought to be incorporated under a de facto corporation, 136 ALR 193.

11-03-02. Petition—Contents—Signers necessary.—The petition for the formation of a new county under this chapter shall:

1. Describe the territory proposed to be taken for the new county;
2. Set forth the name of the proposed new county;
3. Be signed by a majority of the legal voters residing in the territory to be taken from the existing county or counties as determined by the vote cast for the office of governor at the last preceding general election; and
4. Pray for the formation of a new county from the territory described in such petition.

Source: S. L. 1887, ch. 38, § 1; R. C. 1895, § 1854; R. C. 1899, § 1854; R. C. 1905, § 2329; S. L. 1907, ch. 60, § 1; C. L. 1913, § 3205; R. C. 1943, § 11-0302.

Collateral References.

Counties—13.

14 Am. Jur., Counties, § 11.

20 C. J. S. Counties, § 28.

11-03-03. Notice of election—Canvass and return of votes cast.— Notice of the election shall be given and the votes polled at the election shall be canvassed and returned as in the case of general elections.

Source: S. L. 1887, ch. 38, § 1; R. C. 1895, § 1854; R. C. 1899, § 1854; R. C. 1905, § 2329; S. L. 1907, ch. 60, § 1; C. L. 1913, § 3205; R. C. 1943, § 11-0303.

Effect of Election.

A new county was not given a legal existence as such by an election under this section. *Murray v. Davis*, 21 ND 64, 128 NW 305.

Notice of Election.

A notice of election upon a question of county division which was published for three consecutive weeks only is insufficient. *State ex rel. Minehan v. Meyers*, 19 ND 804, 124 NW 701.

Collateral References.

Counties—14; Elections—39-42.
18 Am. Jur., Elections, §§ 105-111.
20 C. J. S. Counties, § 29; 29 C. J. S. Elections, §§ 71-75.

Comment note: Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 ALR 661.

Special election, validity of, as affected by publication or dissemination of matter or information extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 ALR 1142.

Failure of officers to give notice of election as a punishable offense, 134 ALR 1257.

11-03-04. Ballot—Form.—The ballot to be used in an election under this chapter shall be in substantially the following form:

Shall the county of _____ (name county) be formed from territory in the county of _____, or the counties of _____ (name the county or counties affected)?

Yes _____ ☐

No _____ ☐

Source: S. L. 1887, ch. 38, § 1; R. C. 1895, § 1854; R. C. 1899, § 1854; R. C. 1905, § 2329; S. L. 1907, ch. 60, § 1; C. L. 1913, § 3205; R. C. 1943, § 11-0304.

11-03-05. Affirmative vote necessary—Notice to secretary of state—Notice to governor.—If a majority of all the votes cast at the election in each of the counties affected is in favor of the formation of the new county, the county auditor of each of such counties shall certify the same to the secretary of state. Such certificate shall state the name, territorial content, and boundaries of the new county. The secretary of state shall notify the governor of the result of the election.

Source: S. L. 1887, ch. 38, § 5; R. C. 1895, § 1855; R. C. 1899, § 1855; S. L. 1905, ch. 75, § 1; R. C. 1905, § 2330; S. L. 1907, ch. 62, § 1; C. L. 1913, § 3206; R. C. 1943, § 11-0305.

Certificate of Election.

A county auditor has no authority to issue certificate to secretary of state until the validity of a county division election is regularly and finally determined. *State ex rel. Miller v. Miller*, 21 ND 324, 131 NW 232.

A certificate based upon an incomplete canvass of official precinct returns is not *prima facie* evidence of the result of a county division election. *State ex*

rel. *Minehan v. Thompson*, 24 ND 273, 139 NW 960.

Collateral References.

Counties—14; Elections—235-268.
18 Am. Jur., Elections, §§ 241-249.
20 C. J. S. Counties, § 29; 29 C. J. S. Elections, §§ 241-244.

Legislative power to raise constitutional minimum of favorable votes imposed upon adoption of special proposition submitted to voters, 91 ALR 1021.

Constitutional or other special propositions submitted to voters, basis for computing majority essential to adoption of, 131 ALR 1382.

11-03-06. Governor to appoint county commissioners—When county deemed in existence.—The governor shall appoint three persons who reside in and who are qualified electors of such new county and who will accept and qualify as county commissioners for the new county. The commissioners so appointed shall hold office until the first general election thereafter and until their successors are elected and qualified. After the county commissioners appointed by the governor have qualified, the county shall be deemed to have existence as a county.

Source: S. L. 1887, ch. 38, § 5; R. C. 1895, § 1855; R. C. 1899, § 1855; S. L. 1905, ch. 75, § 1; R. C. 1905, § 2330; S. L. 1907, ch. 62, § 1; C. L. 1913, § 3206; R. C. 1943, § 11-0306.

Organization of New County.

Where a county has been divided, the organization of the new county becomes operative upon the appointment of the county commissioners by the governor and their qualification as such. *Murray v. Davis*, 21 ND 64, 128 NW 305.

11-03-07. Temporary county seat, how located.—The board of county commissioners appointed by the governor shall fix the temporary location of the county seat, and the county seat shall remain at such location until after the first general election thereafter.

Source: S. L. 1887, ch. 38, § 7; R. C. 1895, § 1857; R. C. 1899, § 1857; R. C. 1905, § 2332; C. L. 1913, § 3208; S. L. 1917, ch. 101, § 1; 1925 Supp., § 3208; R. C. 1943, § 11-0307.

Cross-Reference.

Permanent selection of county seat, see ch. 11-04.

Runoff Election.

The provisions of section 11-04-03 apply to location of county seats where

the only previous location was under this section. Cahill v. McDowell, 40 ND 625, 169 NW 499.

11-03-08. Board of county commissioners to appoint county officers—Exception.—The board of county commissioners appointed by the governor, after the members thereof have qualified, shall appoint all the county officers of the newly organized county. Such officers, after having qualified, shall hold their offices until the first general election thereafter and until their successors are elected and qualified. All county justices and constables in office within the boundaries of a county organized under this chapter shall continue to hold such offices in the new county during the remainder of their terms and shall give bonds to the new county in the same amount and in the same manner as to the original county.

Source: S. L. 1887, ch. 38, § 6; R. C. 1895, § 1856; R. C. 1899, § 1856; R. C. 1905, § 2331; C. L. 1913, § 3207; R. C. 1943, § 11-0308.

Note.

The provisions of this section do not become effective until July 1, 1961. For the law effective until July 1, 1961, see the equivalent section of the North Dakota Revised Code of 1943.

11-03-09. Division of county into commissioners' districts—Terms of office of commissioners first elected.—The county commissioners appointed by the governor shall divide the county into three commissioners' districts, which districts shall be numbered from one to three. At the first general election after the organization of the county, three commissioners shall be elected, one from each such district, one of whom shall be chosen for the term of two years and two for the term of four years, the order of succession to be determined by lot. Thereafter, each commissioner shall be elected for a term of four years.

Source: Pol. C. 1877, ch. 21, § 16; R. C. 1895, § 1896; R. C. 1899, § 1896; S. L. 1901, ch. 52, § 3; 1903, ch. 74, § 1; R. C. 1905, § 2390; S. L. 1913, ch. 123, § 1; C. L. 1913, § 3264; S. L. 1937, ch. 120, § 1; R. C. 1943, § 11-0309.

Order of Succession.

The method of determining the order of succession by lots is recognized by the constitution of this state as proper. O'Laughlin v. Carlson, 30 ND 213, 152 NW 675.

11-03-10. Records to be transcribed.—When a new county is organized, the board of county commissioners thereof shall cause to be transcribed, by copying or by photographing into the proper books, all the records, deeds, and other instruments relating to real estate, and all other records and instruments of every kind required by law to be kept on file or recorded in the respective county offices in the new county. All records transcribed by copying or by photographing shall have the same effect as original records. A person authorized by the board of county commissioners to transcribe the records shall

have free access at all reasonable times to the original records for the purpose of transcribing them.

Source: S. L. 1887, ch. 38, § 10; 1895, ch. 38, § 1; R. C. 1895, § 1860; R. C. 1899, § 1860; R. C. 1905, § 2335; S. L. 1909, ch. 66, § 1; C. L. 1913, § 3211; R. C. 1943, § 11-0310.

Effect of Transcribed Records.

The transcribed records are in legal effect original records of the new county. *Morin v. Divide County Abstract Co.*, 48 ND 214, 183 NW 1006.

11-03-11. Indebtedness of new county to original county—How and when determined.—A county organized under this chapter shall assume and pay a just proportion of the indebtedness of the county from which it is segregated, based upon the last assessed valuation of the original county and in the proportion that the valuation within the segregated portion bears to the aggregate of the valuation within the whole of the original county. The boards of county commissioners of the county organized under this chapter and of the county from which the latter segregates shall meet at the county seat of the original county on the third Monday in the sixth month following the appointment of the county commissioners of the new county by the governor. They shall ascertain, as near as may be, the total outstanding indebtedness of the original county on the first of January or July, as the case may require, next preceding the date of the joint session and from such total, they shall make the following deductions:

1. The amount of rents due and payable to the original county;
2. The present value of all public property owned by and remaining within the limits of the original county. Such present value in all events shall be deemed equal at least to the amount of any outstanding bonds issued for the payment of such property; and
3. The amount of public funds on hand and belonging to the original county on the day for which its outstanding indebtedness is ascertained which do not belong to the special funds hereinafter mentioned.

The amount remaining after such deductions, for the purpose of the settlement herein provided for, shall be the amount of which the county organized under this chapter shall pay a portion in the proportion hereinbefore specified. The new county shall be charged with the value of county real property within the boundaries thereof. The boards of county commissioners shall ascertain and fix the amount the new county shall assume and pay to the county from which it segregates. The provisions of this section shall be followed even though the new county is organized from parts of two or more organized counties except that the boards of county commissioners of all counties involved shall participate in the proceedings herein described.

Source: S. L. 1887, ch. 38, § 11; R. C. 1905, § 2336; C. L. 1913, § 3212; R. C. 1895, § 1861; R. C. 1899, § 1861; R. C. 1943, § 11-0311.

Roads and Bridges.

Roads and bridges do not constitute public property owned by a county within the meaning of this section. State ex rel. Mountrail County v. Amundson, 23 ND 238, 135 NW 1117.

Settlement between Counties.

Upon the segregation of one county from another a settlement between the counties is required to be made by the board of county commissioners. Braaten v. Olson, 28 ND 235, 148 NW 829.

Collateral References.

Counties—16.

14 Am. Jur., Counties, § 13; generally as to securities and obligations of political subdivisions, see 43 Am. Jur., Pub-

lic Securities and Obligations, § 21 et seq.

20 C. J. S. Counties, §§ 35-38.

Agreement to pay in bonds as importing face or market value, 10 ALR 835. Officer's liability for loss of bonds in which sinking fund was invested through failure of bank, 25 ALR 1358.

Duplicates of mutilated, lost or destroyed bonds, statute in relation to issuance of, 39 ALR 1246; 63 ALR 388.

Prohibition to control action of administrative officers in matters relating to bonds, 115 ALR 22; 159 ALR 634.

Bond issued in excess of amount submitted by law, validity of, within authorized bid, tax or voted limit, 175 ALR 823.

11-03-12. Indebtedness of new county to original county to be paid in bonds.—The amount of indebtedness of a county organized under this chapter, as ascertained by the two boards of county commissioners, shall be paid to the county from which it segregates in the bonds of the new county.

Source: S. L. 1887, ch. 38, § 19; R. C. 1905, § 2345; C. L. 1913, § 3221; R. C. 1895, § 1869; R. C. 1899, § 1869; R. C. 1943, § 11-0312.

11-03-13. Issuance of bonds—Classification—Exchange by original county.—The bonds of the new county shall be:

1. Dated as of the first day of the January or July from which the outstanding indebtedness of the original county is calculated as provided in section 11-03-11;
2. Issued for a period corresponding with the time or term on which the obligations of the original county become due and payable; and
3. Payable at the same place and bear the same rate of interest as the obligations of the original county.

The board of county commissioners shall classify the liquidating bonds and issue a portion of each class in proportion to each class of obligations of the original county bearing different rates of interest and places of payment. The original county shall have authority to exchange such bonds for an equal amount of obligations of its own of the same class.

Source: S. L. 1887, ch. 38, § 20; R. C. 1905, § 2346; C. L. 1913, § 3222; R. C. 1895, § 1870; R. C. 1899, § 1870; R. C. 1943, § 11-0313.

11-03-14. County treasurer to keep bond register.—The county treasurer of a county issuing bonds under the provisions of this chapter

shall provide a book to be called the "bond register" wherein he shall note, as to each such bond:

1. The number and denomination thereof;
2. The date of its issue;
3. When and where the same is payable; and
4. Such other facts as the county commissioners of his county shall direct.

The bond register when completed shall be deposited with the county auditor and shall be and remain a part of the records of that office.

Source: S. L. 1887, ch. 38, § 21; R. C. 1905, § 2347; C. L. 1913, § 3223; R. C. 1895, § 1871; R. C. 1899, § 1871; R. C. 1943, § 11-0314.

11-03-15. Commissioners of new county to issue bonds in denominations required by original county—Exception—Delivery.—The board of county commissioners of a county organized under this chapter shall issue the liquidating bonds in such denominations, not to exceed one thousand dollars each, as may be required by the original county. It shall deliver the same to the county auditor of the original county. He shall receipt therefor and affix the seal of his office to such receipts. The county auditor of the county organized under this chapter shall enter such receipts at large upon the records of the board of county commissioners and note the same in the bond register of his county.

Source: S. L. 1887, ch. 38, § 22; R. C. 1905, § 2348; C. L. 1913, § 3224; R. C. 1895, § 1872; R. C. 1899, § 1872; R. C. 1943, § 11-0315.

11-03-16. Tax levy by new county for payment of bonds.—The board of county commissioners of a county issuing bonds under the provisions of this chapter shall levy and cause to be collected for each year after the date of such bonds a tax sufficient to pay the interest thereon as it shall become due and also sufficient to establish sinking funds required under the laws under which the bonds of the original county were issued and sufficient to redeem the bonds at maturity.

Source: S. L. 1887, ch. 38, § 23; R. C. 1905, § 2349; C. L. 1913, § 3225; R. C. 1895, § 1873; R. C. 1899, § 1873; R. C. 1943, § 11-0316.

11-03-17. Tax collected for payment of bonds must be used for that purpose—Use of surplus.—The money collected for the payment of the interest or principal of the bonds issued under the provisions of this chapter shall not be used for any other purpose until the bonds are redeemed. Any surplus shall be placed in the county general fund.

Source: S. L. 1887, ch. 38, § 24; R. C. 1905, § 2350; C. L. 1913, § 3226; R. C. 1895, § 1874; R. C. 1899, § 1874; R. C. 1943, § 11-0317.

11-03-18. Payment to new county when public funds of original county exceed its indebtedness.—A county in which the amount of

public funds on hand at the time of the settlement provided for in section 11-03-11 exceeds the total of its outstanding indebtedness after the deductions provided for in that section have been made shall pay over a just proportion of such funds to the county segregated from it and organized under this chapter. The portion paid to the segregated county shall be based upon the assessed valuation of the whole of the original county and for the year prior to the date of the segregation and shall be in the proportion that the valuation within the segregated portion bears to the aggregate of the valuation within the whole of the original county. The boards of county commissioners shall meet as provided in section 11-03-11 and ascertain the amount to be paid, and the board of county commissioners of the original county shall order warrants issued for such amount, payable immediately, to the treasurer of the county organized under this chapter. The treasurer of the segregated county shall place the amount received to the credit of the proper funds of his county.

Source: S. L. 1887, ch. 38, § 13; R. C. 1905, § 2338; C. L. 1913, § 3214; R. C. 1895, § 1863; R. C. 1899, § 1863; R. C. 1943, § 11-0318.

11-03-19. Special funds belonging to taxing districts within new county—Delivery—Distribution.—At the time of the settlement provided for in section 11-03-11, all money on hand in the treasury of a county from which a portion segregates under this chapter and which belongs to special funds owned by taxing districts which, after the segregation, are within the boundaries of the new county, shall be turned over in full by the treasurer of the original county to the treasurer of the new county. The treasurer of the new county shall receipt for such funds and shall place the same to the credit of the taxing districts within his county to which they properly belong.

Source: S. L. 1887, ch. 38, § 12; R. C. 1905, § 2337; C. L. 1913, § 3213; R. C. 1895, § 1862; R. C. 1899, § 1862; R. C. 1943, § 11-0319.

11-03-20. Commissioners of original county to fill vacancies and redistrict county.—The board of county commissioners of a county from which a portion segregates under this chapter, immediately after such segregation, shall redistrict its county into the commissioners' districts provided for by the laws then existing and shall fill any vacancies occasioned by the segregation in the manner provided by law for filling vacancies.

Source: S. L. 1887, ch. 38, 14; R. C. 1905, § 2339; C. L. 1913, § 3215; R. C. 1895, § 1864; R. C. 1899, § 1864; R. C. 1943, § 11-0320.

11-03-21. School and road districts renumbered and renamed.—School districts and road districts within a county affected by this

chapter shall be renumbered so as to make their numbers run consecutively in each county.

Source: S. L. 1887, ch. 38, § 15; R. C. 1895, § 1865; R. C. 1899, § 1865; R. C. 1905, § 2341; C. L. 1913, § 3217; R. C. 1943, § 11-0321.

Cross-Reference.
Naming school districts, see § 15-23-06.

11-03-22. Validity of bonds issued by school district not affected by division.—The validity of bonds issued by school districts prior to the division of a county under this chapter shall not be affected by the division nor by the renumbering or renaming of the school district which issued them.

Source: S. L. 1887, ch. 38, § 17; R. C. 1905, § 2343; C. L. 1913, § 3219; R. C. 1895, § 1867; R. C. 1899, § 1867; R. C. 1943, § 11-0322.

11-03-23. Original county cannot collect revenue in new county.—The authority of a county, from which a portion segregates under the provisions of this chapter, to collect revenue within the boundaries of the new county, shall cease on the date upon which the two boards of county commissioners base the settlement between their counties. All assessments and levies lawfully made by the original county prior to such date affecting any of the territory embraced in the boundaries of the new county shall remain the same and shall be payable to and collectible by the lawful authorities of the new county.

Source: S. L. 1887, ch. 38, § 25; R. C. 1905, § 2351; C. L. 1913, § 3227; R. C. 1895, § 1875; R. C. 1899, § 1875; R. C. 1943, § 11-0323.

11-03-24. County judicial subdivision of what district.—A county organized under the provisions of this chapter shall remain a part of the judicial district to which it belonged before its organization.

Source: S. L. 1887, ch. 38, § 26; R. C. 1905, § 2352; C. L. 1913, § 3228; R. C. 1895, § 1876; R. C. 1899, § 1876; R. C. 1943, § 11-0324.

11-03-25. Judges to appoint term of district court in new county.—The judges of the judicial district in which a county organized under this chapter is situated shall appoint and hold at least two terms of the district court each year at the county seat of such county.

Source: S. L. 1887, ch. 38, § 27; R. C. 1895, § 1877; R. C. 1899, § 1877; R. C. 1905, § 2353; C. L. 1913, § 3229; R. C. 1943, § 11-0325.

Cross-Reference.
Change in venue in county court on division of county, see § 27-07-04.

11-03-26. Writs, bonds, and recognizances issued from new county.—All process, writs, bonds, notices, appeals, recognizances, papers, and proceedings in actions changed to a new county under this chapter, issued and made returnable to the district court of the original county

prior to the creation of the new county, shall be taken and considered as made, taken, and returnable to the district court within the boundaries of the new county. Such bonds, recognizances, and obligations shall be payable to the new county and recoverable upon in the name of the new county. All papers and certified copies of all proceedings had in any such action shall be transmitted by the clerk of the district court of the original county to the clerk of the district court of the new county.

Source: S. L. 1887, ch. 38, § 29; R. C. 1905, § 2355; C. L. 1913, § 3231; R. C. 1895, § 1879; R. C. 1899, § 1879; R. C. 1943, § 11-0326.

11-03-27. Fees of county commissioners.—County commissioners while in the discharge of their duties as provided for in this chapter shall receive the same compensation as is allowed by law for the performance by county commissioners of their ordinary official duties.

Source: S. L. 1887, ch. 38, § 18; R. C. 1905, § 2344; C. L. 1913, § 3220; R. C. 1895, § 1868; R. C. 1899, § 1868; R. C. 1943, § 11-0327.

11-03-28. Elections governed by general election law.—All elections held under this chapter, when it is not otherwise provided, shall be conducted in the manner prescribed by law for the conduct of general elections. The refusal or neglect on the part of an official to perform his lawful duties in connection with an election under this chapter shall not affect the validity of the election.

Source: S. L. 1887, ch. 38, § 9; R. C. 1895, § 1859; R. C. 1899, § 1859; R. C. 1905, § 2334; C. L. 1913, § 3210; R. C. 1943, § 11-0328.

Registration of Voters.

The provisions of this section apply to the minor details and irregularities of election officers, and the conduct of the election, and not to the mandatory re-

quirements of registration and election statutes, and if no registry list is used, the duty is upon the person seeking to vote to furnish the statutory affidavits, and, if he fails to do so, his vote should not be received nor counted. *Fitzmaurice v. Willis*, 20 ND 372, 127 NW 95, explained in 22 ND 177, 132 NW 664.

CHAPTER 11-05

CONSOLIDATION OF COUNTIES

Section		Section	
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11-05-02	Petition for consolidation—Election on question of consolidation.	11-05-14	When consolidation is complete.
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11-05-11	Equalization of assets and liabilities of counties.		
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Section		Section	
11-05-22	Territory in petitioning county to remain in same legislative district until apportionment—Election of legislators—How conducted.	11-05-26	Board of county commissioners of adjoining county may issue evidences of indebtedness for petitioning county.
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CHAPTER 11-05—CONSOLIDATION OF COUNTIES

Section		Section	
11-05-01	Definition of terms.	11-05-08	Resubmission of question.
11-05-02	Board of county commissioners to submit consolidation plan to electorate.	11-05-11.1	Arbitration of disagreement.
11-05-04	Notice of election — How given.	11-05-19	Members of board of county commissioners of petitioning county to meet with board of adjoining county—Expiration of terms of officers of petitioning county.
11-05-05	Form of ballot.		
11-05-07	Affirmative vote necessary to consolidate counties.		

1973 SUPPLEMENT

11-05-01. Definition of terms.—Throughout this chapter, a county which has created a plan for consolidation with another county or counties pursuant to chapter 11-05.1 shall be called the "petitioning county". The county with which the petitioning county asks to be consolidated shall be called the "adjoining county".

Source: N.D.C.C.; S. L. 1965, ch. 98,

1973 SUPPLEMENT

§ 2.

11-05-02. Board of county commissioners to submit consolidation plan to electorate.—Whenever a county consolidation plan is submitted to a board of county commissioners pursuant to chapter 11-05.1, the board of county commissioners shall submit the question of consolidation to the qualified electors of the county at the next primary election in the manner hereinafter provided.

Source: N.D.C.C.; S. L. 1965, ch. 98.

1973 SUPPLEMENT

11-05-03. Consolidation of all territory within organized county with two or more counties—Petitions required—Election.—A county may be disorganized and the territory therein divided among and attached to two or more adjoining counties upon compliance with the provisions of this section. Petitions signed by thirty per cent of the voters of each portion of the petitioning county, as determined by the vote cast for the office of governor at the last preceding general election, shall be filed with the boards of county commissioners of the petitioning county and of the adjoining counties named in such petitions. Such petitions shall not be considered unless petitions are filed under this section which together dispose of all of the territory in the petitioning county, nor unless such petitions have been filed at least ninety days prior to a state-wide primary election. If the petitions conform to the requirements of this section, the boards of county commissioners to which such petitions are addressed shall submit the question of consolidation to the qualified electors of each of the counties affected at the next state-wide primary election.

Source: S. L. 1933, ch. 92, § 1; 1939, ch. 121, § 1; R. C. 1943, § 11-0503.

18 Am. Jur., Elections, §§ 102-104.
20 C. J. S. Counties, §§ 23-29.

Collateral References.

Counties—11, 13, 14.

Nonregistration as affecting one's qualification as a signer of petition for special election, 100 ALR 1308.

11-05-04. Notice of election—How given.—The county auditor of each of the counties affected shall give notice of the election by publishing once each week for at least two consecutive weeks prior to the election in the official newspaper of his county a notice giving the date of the primary election, the hours during which the polls will be opened, a reference to the notice of the primary election for a statement of the places where the election will be held, and the names of the counties affected by the petitions. The notice shall state also that the proposition to be voted upon will be:

Shall the county of _____ (name of the petitioning county) be consolidated and annexed to the county of _____ (name of the adjoining county);

or if the plans which have been filed ask that the territory be consolidated with and annexed to more than one county:

Shall that part of the county of _____ (name of the petitioning county) described as _____ (description of portion of petitioning county to be annexed as described in the plan) be consolidated with and annexed to the county of _____ (name of the adjoining county).

Source: N.D.C.C.; S. L. 1965, ch. 98,

§ 4.

11-05-05. Form of ballot.—The ballots used at an election held under the provisions of this chapter shall be in substantially the following form:

Shall the county of _____ (name of the petitioning county) be consolidated with and annexed to the county of _____ (name of the adjoining county);

or if the plans which have been filed ask that the territory within the petitioning county be consolidated with and annexed to more than one county, in substantially the following form:

Shall that part of the county of _____ (name of the petitioning county) described as _____ (description of portion of petitioning county to be annexed as described in the plan) be consolidated with and annexed to the county of _____ (name of the adjoining county).

1973 SUPPLEMENT

Below the question submitted in either case, there shall be printed:

Yes _____ ☐
No _____ ☐

Source: N.D.C.C.; S. L. 1965, ch. 98,

§ 5.

11-05-06. Canvass of votes and returns—How made.—The votes polled at an election held under the provisions of this chapter shall be canvassed and returned in the manner provided for canvassing votes polled at general elections.

Source: S. L. 1933, ch. 92, § 5; R. C. 1943, § 11-0506.

11-05-07. Affirmative vote necessary to consolidate counties.—If fifty-five per cent of the legal votes cast on the question of consolidation in each of the counties affected shall be in favor of consolidation, all of the territory included within the established boundaries of the petitioning county shall be consolidated with and annexed to the adjoining county or counties described in the petition or petitions.

Source: N.D.C.C.; S. L. 1963, ch. 109, § 1.

1973 SUPPLEMENT

11-05-08. Resubmission of question.—The proposition of consolidation shall not be voted upon more often than once in three years.

Source: N.D.C.C.; S. L. 1963, ch. 109,

1973 SUPPLEMENT

11-05-09. County auditor to notify secretary of state of result of election.—Within ten days after the filing of the findings and certificates of the canvassing board on the question of consolidation in each of the counties, the county auditor of each county shall send a correct and duly certified abstract of the votes polled at the election to the secretary of state.

Source: S. L. 1933, ch. 92, § 6; 1937 ch. 121, § 1; R. C. 1943, § 11-0509.

1973 SUPPLEMENT

11-05-10. Secretary of state to notify governor of result of election—Governor's proclamation.—If the question of consolidation has received the required number of affirmative votes, the secretary of state shall notify the governor. The governor, without delay, shall issue his proclamation announcing and declaring the result of the election.

Source: S. L. 1933, ch. 92, § 6; 1937 ch. 121, § 1; R. C. 1943, § 11-0510.

11-05-11. Equalization of assets and liabilities of counties.—The boards of county commissioners of the petitioning and adjoining counties shall meet at the courthouse in the petitioning county on the third Tuesday in December following the governor's proclamation to effect an equalization of the property, funds on hand, and debts of such counties. Such boards shall have the necessary records of the petitioning county transcribed and made a part of the records of the adjoining county or counties and shall do and perform such other acts as may be necessary to carry out the consolidation of the counties.

Source: S. L. 1933, ch. 92, § 15; R. C. 1943, § 11-0511.

11-05-11.1. Arbitration of disagreement.—In the event a majority of each board of county commissioners of the petitioning and adjoining counties cannot effect an equalization of the property, funds on hand, and debts of such counties, the chairman of the board of commissioners of the petitioning county shall immediately notify the governor of such disagreement. The governor shall appoint a three-member arbitration board to hear and decide the disagreement, all decisions made by a majority of the members of the arbitration board shall be final and binding on each respective board of county commissioners.

Source: S. L. 1965, ch. 98, § 6,

11-05-12. Records and equipment transferred to adjoining county.—Within five days prior to the first day of January following the governor's proclamation, the officers of the petitioning county shall remove all the files, records, books, papers, equipment, fixtures, and furniture of their respective offices to the courthouse of the adjoining county or counties. Such files, records, books, papers, equipment, fixtures, and furniture shall become the property of the adjoining county or counties as constituted after the first day of January following the date of the governor's proclamation.

Source: S. L. 1933, ch. 92, § 7; R. C. 1943, § 11-0512.

11-05-13. Money and property delivered to adjoining county.—Money to be kept in separate fund.—All moneys and property in the custody or possession of any officer of the petitioning county shall be delivered to the proper officer or officers of the adjoining county or counties within five days prior to the first day of January following the date of the governor's proclamation. All moneys so transferred shall be kept in a separate fund for the purpose of paying the indebtedness of the petitioning county. All moneys of the petitioning county raised for interest and sinking funds shall be kept in a separate fund for

the payment of interest and principal, when due, on bonds or certificates of indebtedness issued by the petitioning county.

Source: S. L. 1933, ch. 92, § 7; R. C. 1943, § 11-0513.

11-05-14. When consolidation is complete.—On and after January first following the date of the governor's proclamation, the petitioning county shall cease to exist as a county and all that territory embraced within its limits shall be consolidated with and annexed to, and shall form an integral part of, the adjoining county or counties.

Source: S. L. 1933, ch. 92, § 6; 1937, ch. 121; R. C. 1943, § 11-0514.

11-05-15. Officers of petitioning county to hold office until time expires—Duties.—Repealed by S. L. 1965, ch. 98, § 54.

Note.

For present provisions, see § 11-05-19.

1973 SUPPLEMENT

11-05-16. Judicial actions and proceedings transferred to courts of adjoining county.—All actions or suits of every nature which have been filed or which are pending in any of the courts of the petitioning county on the first day of January following the governor's proclamation shall be transferred to the courts of the adjoining county or counties in accordance with the provisions of this section:

1. All such actions or suits filed or pending in the district court of the petitioning county shall be transferred by the clerk of such court to the clerk of the district court of the adjoining county;
2. All probate proceedings or other actions pending in the county court of the petitioning county shall be transferred to the county court of the adjoining county and shall be heard, tried, and determined by that court as though originally filed therein;
3. All actions pending in the court of a county justice of the petitioning county shall be transferred to and tried by the county justice of the adjoining county whose office is located in or nearest to the courthouse of the adjoining county. The county justices of the petitioning county, within ten days after the first day of January following the governor's proclamation, shall deliver their dockets and all other books and records of their offices to the clerk of the district court of the adjoining county.

If the petitioning county is joined to two or more adjoining counties, the judge of the court in which any action or proceeding is pending in the petitioning county may direct to which of the adjoining counties the action or proceeding shall be transferred.

Source: S. L. 1933, ch. 92, § 12; R. C. 1943, § 11-0516.

become effective until July 1, 1961. For the law effective until July 1, 1961, see the equivalent section of the North Dakota Revised Code of 1943.

Note.

The provisions of this section do not

11-05-17. Trial of criminal cases transferred to adjoining county.—All criminal cases transferred from the petitioning county to the adjoining county or counties pursuant to section 11-05-16 shall be tried by a jury drawn in the manner provided by the laws of this state from the qualified jurors residing within the limits of the territory which had constituted the petitioning county unless the defendant in any such criminal case shall consent to be tried by a jury of the adjoining county.

Source: S. L. 1933, ch. 92, § 12; R. C. 1943, § 11-0517.

11-05-18. Officers shall not be elected in petitioning county.—Nominations received by a candidate for a county office in a petitioning county at an election at which the question of consolidating the county is voted upon shall be null and void if the consolidation of such county is approved as provided in this chapter, and no county officers shall be elected in such county at the general election.

Source: S. L. 1933, ch. 92, § 8; R. C. 1943, § 11-0518.

11-05-19. Members of board of county commissioners of petitioning county to meet with board of adjoining county—Expiration of terms of officers of petitioning county.—Each member of the board of county commissioners of the petitioning county whose term of office does not expire on or before the first day of January following the governor's proclamation shall act, during the remainder of his term of office, at all meetings with the board of county commissioners of the adjoining county to which the greater portion of the territory of the commissioner's district has been annexed. A member of the board of county commissioners of the petitioning county so acting shall have no voice or vote on any question pertaining to matters arising within the territory included in the adjoining county prior to the consolidation, but as to questions pertaining to the territory formerly included in the petitioning county he shall be permitted to act and vote with the board of county commissioners of the adjoining county. The terms of all other county officers of the petitioning county, both elected and appointed, shall expire, unless such officers' terms have previously expired, on the first day of January following the governor's proclamation.

Source: N.D.C.C.; S. L. 1965, ch. 98,
§ 7.

1973 SUPPLEMENT

11-05-20

COUNTIES

11-05-20. Board of county commissioners of adjoining county to redistrict new county.—The board of county commissioners of the adjoining county, at the first meeting following the consolidation, shall redistrict the territory of the county as consolidated into commissioner districts, and the members of the board of county commissioners acting from the petitioning county shall be considered as commissioners at large until the expiration of their respective terms of office.

Source: S. L. 1933, ch. 92, § 9; R. C. 1943, § 11-0520.

11-05-21. Compensation of commissioners of petitioning county—Vacancy not to be filled.—A member of the board of county commissioners of the petitioning county, during his unexpired term of office, shall receive the same fees and compensation as that paid to him by the petitioning county prior to the consolidation. Such compensation and fees shall be paid by the adjoining county out of taxes collected upon property in the territory which, prior to the consolidation, constituted the petitioning county. If a vacancy occurs during the term of office of a member of the board of county commissioners of the petitioning county, no successor to such commissioner shall be appointed and upon the expiration of the term of office of any such commissioner, no successor shall be elected.

Source: S. L. 1933, ch. 92, § 9; R. C. 1943, § 11-0521.

11-05-22. Territory in petitioning county to remain in same legislative district until apportionment—Election of legislators—How conducted.—The territory which constituted the petitioning county shall remain in the legislative district of which it was a part prior to the consolidation until the next apportionment of the state into legislative districts. If the territory from which the respective counties were constituted before the consolidation is in different legislative districts, the county auditor or auditors of the adjoining county or counties shall keep separately the vote polled in the territory constituting the respective counties before the consolidation at any election for state senators or representatives and shall report and return such vote separately to the secretary of state.

Source: S. L. 1933, ch. 92, § 16; R. C. 1943, § 11-0522.

11-05-23. Authority of officers of adjoining county.—On and after the first day of January following the governor's proclamation, the officers of the adjoining county or counties shall perform any and every act necessary to be performed within the territory that had constituted the petitioning county. The acts so performed shall have

the same validity as though such officers had been elected from the petitioning county.

Source: S. L. 1933, ch. 92, § 11; R. C. 1943, § 11-0523.

11-05-24. Petitioning and adjoining counties liable for only their own debts.—The adjoining county or counties shall not become liable for the debts of the petitioning county contracted prior to consolidation, nor shall the petitioning county become liable for the debts of the adjoining county or counties contracted prior to such time.

Source: S. L. 1933, ch. 92, § 13; 1939, ch. 121, § 2; R. C. 1943, § 11-0524.

11-05-25. Power of adjoining county to levy taxes in petitioning county to pay debts.—The board or boards of county commissioners of the adjoining county or counties shall have all the powers which the board of county commissioners of the petitioning county had at the time of the consolidation, to levy taxes upon the property in the territory which, prior to the consolidation, constituted the petitioning county, for the purpose of paying the debts and obligations of the petitioning county in existence at the time of consolidation.

Source: S. L. 1933, ch. 92, § 13; 1939, ch. 121, § 2; R. C. 1943, § 11-0525.

11-05-26. Board of county commissioners of adjoining county may issue evidences of indebtedness for petitioning county.—The board or boards of county commissioners of the adjoining county or counties may compromise debts and obligations of the petitioning county existing at the time of the consolidation and may issue bonds or certificates of indebtedness in settlement or compromise of, or to fund, such debts and obligations. Bonds or certificates issued under this section shall bear upon their face a statement that the principal and interest to become due thereon shall be paid only from taxes levied upon the property within the territory which constituted the petitioning county prior to the consolidation.

Source: S. L. 1933, ch. 92, § 13; 1939, ch. 121, § 2; R. C. 1943, § 11-0526.

11-05-27. Suits against petitioning county brought against adjoining county.—Payment of judgment against petitioning county.—Any suit which might have been brought against the petitioning county if it had remained an independent county may be brought, after the consolidation, against the adjoining county or counties. Any judgment rendered in any such suit shall be paid from funds raised by taxes levied upon the property in the territory which constituted the petitioning county prior to the consolidation.

Source: S. L. 1933, ch. 92, § 14; R. C. 1943, § 11-0527.

CHAPTER 11-05.1—COUNTY CONSOLIDATION COMMITTEE

Section		Section	
11-05.1-01	County consolidation committee — Creation—Membership — Dissolution.	11-05.1-04	Approval of consolidation plan.
11-05.1-02	Chairman — Secretary — Quorum.	11-05.1-05	Approval of new county government plan.
11-05.1-03	Powers and duties.	11-05.1-06	Expenses.

1973 SUPPLEMENT

11-05.1-01. County consolidation committee—Creation—Membership—Dissolution.—The board of county commissioners of any county may upon its own motion create a county consolidation committee and shall be required to create such committee whenever twenty percent of the qualified electors of a county, as determined by the vote cast for the office of governor at the last general election, shall petition the board of county commissioners to create such committee. The members of the committee shall be appointed by the board of county commissioners and shall consist of one resident of each incorporated city in the county and one additional resident of each county commissioner's district, plus not more than three additional members at large as shall be determined by the board of county commissioners. Vacancies upon the committee shall be filled in the same manner as members are originally appointed. The committee shall have at least one hundred twenty days in which to consider the question and file its final report but after one hundred twenty days the committee may be discharged by motion of the board of county commissioners. The word "committee" when used in this chapter shall mean the county consolidation committee.

Source: S. L. 1965, ch. 98, § 1.

11-05.1-02. Chairman—Secretary—Quorum.—The committee shall select its own chairman and shall appoint one of its members as secretary. A majority of the committee shall constitute a quorum and a majority of such quorum may act upon all matters properly before the committee.

Source: S. L. 1965, ch. 98, § 1.

11-05.1-03. Powers and duties.—The committee shall have the following powers and duties:

1. To study or prepare a plan to consolidate the county with one or more adjoining counties or study and propose an alternative form of county government as authorized by law;
2. To hold meetings and hold public hearings to consider proposals which may be submitted by electors of the county or adjoining counties or obtain public views upon plans prepared by the committee; and
3. To publish once in one or more newspapers having general circulation in the county one week in advance the date and times of public hearings.

Source: S. L. 1965, ch. 98, § 1.

11-05.1-04. Approval of consolidation plan.—If the committee shall approve a consolidation plan it shall submit a report and a map showing the boundaries of the proposed county consolidation to the board of county commissioners of the county and of each affected adjoining county. Such reports may also be made available to all interested persons. When such reports and maps have been received by the respective boards of county commissioners, the board of county

commissioners of the county to be consolidated and the board of county commissioners of all affected adjoining counties shall act pursuant to sections 11-05-04 through 11-05-27.

Source: S. L. 1965, ch. 98, § 1.

11-05.1-05. Approval of new county government plan.—If the committee shall recommend a new form of county government among the optional plans provided by law, they shall submit a report of their findings to the board of county commissioners. If the plan submitted by the committee is the consolidated office form of government, the board of county commissioners shall proceed as provided in chapter 11-08 or if the plan is that of county managership form then the board of county commissioners shall proceed as provided in chapter 11-09.

Source: S. L. 1965, ch. 98, § 1.

11-05.1-06. Expenses.—Each member of the committee shall receive from the county his actual and necessary expenses incurred by him in attending scheduled meetings and in performance of his official duties in the same manner and amounts as members of the board of county commissioners, but shall receive no salary or compensation for services performed. All expenses of the committee shall be paid from county funds after approval of such expenses by the board of county commissioners in the same manner as other general county expenses.

Source: S. L. 1965, ch. 98, § 1.

CHAPTER 11-06

CHANGING COUNTY LINES

Section		Section	
11-06-01	Changing county lines by transfer of territory from one county to another authorized—Petitions required.	11-06-06	When territory transferred—Assessment of taxes—Judicial and official proceedings—Township officers continue in office.
11-06-02	Area and population requirements of county after change in boundaries—When petition disregarded.	11-06-07	Debts of transferred territory—Payment to county from which transferred.
11-06-03	Election required—Duties of boards of county commissioners.	11-06-08	Redistricting when county enlarged.
11-06-04	Election—Notice—Ballot—Returns.	11-06-09	When territory less than one congressional township—Election.
11-06-05	Petition and election within three years of prior election.		

11-06-01. Changing county lines by transfer of territory from one county to another authorized.—Petitions required.—Territory may be transferred from one county to another by compliance with the provisions of this chapter. A majority of the qualified electors, as determined by the vote cast for the office of governor at the last general election, residing in any territory comprising an area of not less than one congressional township, may petition the board of county commissioners of the county in which they reside, and the board of county commissioners of the county to which they desire territory transferred, for permission to have the territory described in the petition transferred from one county to another. Such petition shall be presented to the boards of county commissioners of the counties affected at least sixty days before a general election.

Source: K. C. 1895, § 1847; R. C. 1899, § 1847; R. C. 1905, § 2323; S. L. 1911, ch. 107, § 1; C. L. 1913, § 3199; R. C. 1943, § 11-0601.

Reduction in Area.

Petition to detach six townships from one county and transfer same to another county violated section 167 of the state constitution where it would reduce county from twenty-four townships to eighteen townships. State ex

rel. Ulander v. County Comrs., 49 ND 151, 190 NW 549.

Collateral References.

Counties—9, 10, 13.

14 Am. Jur., Counties, §§ 14, 15.

20 C. J. S. Counties, §§ 23-41.

Challenging acts or proceedings by which its boundaries are affected, right of county as to, 86 ALR 1373.

11-06-02. Area and population requirements of county after change in boundaries—When petition disregarded.—The area of a county shall not be reduced to less than twenty-four congressional townships nor shall the population of a county be reduced to less than five thousand bona fide inhabitants under the provisions of this chapter. Any petition which would effect a reduction in an organized county contrary to the provisions of this section shall be disregarded.

Source: N. D. Const., § 167; R. C. 1895, Art. 55, June 25, 1940, S. L. 1941, p. § 1850; R. C. 1899, § 1850; R. C. 1905, 587, § 1; R. C. 1943, § 11-0602. § 2326; C. L. 1913, § 3202; Const. Amd.

11-06-03. Election required—Duties of boards of county commissioners.—The boards of county commissioners to which petitions are addressed under the provisions of this chapter shall order an election to be held in their respective counties to vote upon the question of the change in county lines specified in the petitions if the petitions comply with the requirements of this chapter. Such election shall be held at and in connection with the general election next following the filing of the petitions.

Source: R. C. 1895, § 1847; R. C. 1899, § 1847; R. C. 1905, § 2323; S. L. 1911, ch. 107, § 1; C. L. 1913, § 3199; R. C. 1943, § 11-0603.

Duties of County Commissioners.

Mandamus would not lie to compel county commissioners to submit to the voters of the county the question of the

transfer of six townships of the county to another county where the petition to transfer would reduce the county from twenty-four townships to eighteen townships in violation of section 167 of the state constitution. State ex rel. Ulander v. County Comrs., 49 ND 151, 190 NW 549.

11-06-04. Election — Notice — Ballot — Returns.—The notice of an election to change the boundaries of a county shall contain a description of the territory proposed to be transferred, the name of the county from which, and the name of the county to which, the transfer is intended to be made. The notice shall be posted as required for general elections. The ballot to be used at the election shall be in substantially the following form:

Shall _____ (describe the territory) be transferred from the county of _____ (name county) to the county of _____ (name county)?

Yes _____ ☐
No _____ ☐

The result of the election shall be reported to the secretary of state.

Source: R. C. 1895, §§ 1847 to 1849; 20 C. J. S. Counties, § 29; 29 C. J. S. R. C. 1899, §§ 1847 to 1849; R. C. 1905, Elections, §§ 241-244. §§ 2323 to 2325; C. L. 1913, § 3199 to 3201; R. C. 1943, § 11-0604.

Collateral References.

Counties—14; Elections—39-42.
18 Am. Jur., Elections, §§ 105-111.

Comment note: Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 ALR 661.

Special election, validity of, as affected by publication or dissemination of matter or information extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 ALR 1142.

Failure of officers to give notice of election as a punishable offense, 134 ALR 1257.

11-06-05. Petition and election within three years of prior election.—If an election has been held on a petition filed under the provisions of section 11-06-01 and the result has been adverse to the petitioners, it is discretionary with the boards of county commissioners whether or not another election shall be held on a petition to transfer the same territory if such petition is presented within three years from the time of holding the former election.

Source: R. C. 1895, § 1853; R. C. 1899, § 1853; R. C. 1905, § 2328; C. L. 1913, § 3204; R. C. 1943, § 11-0605.

11-06-06. When territory transferred—Assessment of taxes—Judicial and official proceedings—Township officers continue in office.—If a majority of the qualified electors in each of the counties affected voting on the question shall favor transferring the territory, such territory, on the first day of March succeeding the election, shall become a part of the county to which the transfer was proposed to be made. The assessment and collection of taxes and judicial and other official proceedings commenced prior to such first day of March shall be continued, prosecuted, and completed in the same manner as if no transfer had been made. All township officers within the transferred territory shall continue to hold their offices within the county to which such territory is transferred until their terms of office expire.

Source: R. C. 1895, § 1849; R. C. 1899, § 1849; R. C. 1905, § 2325; C. L. 1913, § 3201; R. C. 1943, § 11-0606.

11-06-07. Debts of transferred territory—Payment to county from which transferred.—Territory transferred under the provisions of this chapter shall not be released from the payment of its proportion of the debts of the county from which it was transferred. Such proportion shall be collected by the county to which the territory is transferred at an equal or greater rate than is levied and collected in the county from which the territory was transferred, such rate to be ascertained by the certificate of the county auditor of the county from which the territory was transferred. When the funds for the payment of such indebtedness are collected, such funds shall be paid over to the county entitled thereto. When the county to which territory is transferred is indebted, the board of county commissioners of such county shall release the transferred territory from the payment of such

indebtedness to an amount equal to that which the territory is required to pay to the county from which it was transferred.

Source: R. C. 1895, §§ 1851, 1852; R. C. 1899, §§ 1851, 1852; R. C. 1905, § 2327; C. L. 1913, § 3203; R. C. 1943, § 11-0607.

11-06-08. Redistricting when county enlarged.—Whenever the boundaries of any organized county shall have been enlarged by the addition thereto of any additional territory, the board of county commissioners of such county shall redistrict the county into commissioner districts immediately. Such redistricting may be done at a regular or special meeting. The districts shall be made as regular and as compact in form as practicable and as nearly equal in population as possible, but no new district shall be so formed that any two of the then acting commissioners shall reside in the same district.

Source: S. L. 1905, ch. 71, §§ 1, 2; R. C. 1905, § 2340; C. L. 1913, § 3216; R. C. 1943, § 11-0608.

11-06-09. When territory less than one congressional township—Election.—When a majority of the legal voters of a territory containing less than one congressional township shall petition the boards of county commissioners as provided in section 11-06-01, such boards, in their discretion, may order elections to be held as provided in this chapter to pass upon the question of the change in county lines prayed for in the petitions.

Source: R. C. 1895, § 1853; R. C. 1899, § 1853; R. C. 1905, § 2323; C. L. 1913, § 3204; R. C. 1943, § 11-0609.

POWERS OF TOWNSHIP AND OF ELECTORS OF THE TOWNSHIP *

Section		Section	
58-03-01	Powers of township.	58-03-10	Township bylaws—Clerk must publish and record — On whom binding.
58-03-02	Powers of township limited.	58-03-11	Establishment of zoning districts—Limitation—Scope of zoning regulations and restrictions.
58-03-03	Acts of township to be in corporate name.	58-03-12	Basis for township zoning regulations and restrictions.
58-03-04	Townships provide for confinement of prisoners.	58-03-13	Township zoning commissions —Membership—Reports and recommendations — District boundaries — Hearings — Notice.
58-03-05	Notice to be given that township is providing jail.	58-03-14	Violation of zoning regulations and restrictions—Remedies.
58-03-06	Township charges and levies.	58-03-15	Appeals.
58-03-07	Powers of electors.		
58-03-08	Establishment of public library and reading room — Repealed.		
58-03-09	Township electors shall designate public places for posting notices.		

*Only §§ 58-03-01, 58-03-02,

58-03-06 and 58-03-07 are reproduced

58-03-01. Powers of township.—Each township is a body corporate and has capacity:

1. To sue and be sued;
2. To purchase and hold lands within its limits and for the use of its inhabitants subject to the powers of the legislative assembly;
3. To make such contracts and purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers; and
4. To make such orders for the disposition, regulation, or use of its corporate property as may be deemed conducive to the interests of its inhabitants.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 8; R. C. 1895, § 2537; R. C. 1899, § 2537; R. C. 1905, § 3058; C. L. 1913, § 4083; R. C. 1943, § 58-0301.

Cross-References.

Authority to acquire, operate, and regulate airports, see § 2-02-01.

Beer or liquor licenses, see § 5-01-07.

Lease land for oil and gas development, see § 38-09-02.

Motor vehicle and aircraft insurance, see § 39-01-08.

Political subdivisions authorized to carry liability insurance, defense of immunity not available to insurers, see § 40-43-07.

Suits by and against townships, see ch. 58-14.

Township may accept devises, bequests, legacies, and gifts, see § 1-08-04.

Water conservation projects, see § 61-02-24.1.

Weed control authorities, see § 63-01.1-07.

Acts of Officers.

The township is liable for damages to private property arising out of the acts of its officers under color of office, even though the acts were carried out in an unauthorized manner. *Township of Noble v. Aasen*, 8 ND 77, 76 NW 990.

Negligence of Officers.

A township is not liable for a personal injury received by reason of the negligence of a township officer in failing to keep a bridge in repair. *Vail v.*

Bonds, provisions governing, see ch. 21-03.

Certificates of indebtedness, see ch. 21-02.

Joint exercise of governmental powers, see ch. 54-40.

Joint ownership of public buildings and grounds, see § 48-04-01.

distinguished in 8 ND 77, 76 NW 990, 79 ND 495, 57 NW 2d 588.

Purchase of Land.

A township has no power to purchase land outside its boundaries. *Pierce Township of Barnes County v. Ernie*, 74 ND 16, 19 NW 2d 755.

Statute of Limitations.

A township is subject to statutes of limitation with respect to actions brought by it. *Lakeville Township v. Northwestern Trust Co.*, 74 ND 396, 22 NW 2d 591.

Ultra Vires Acts.

Where a township board has purchased real estate for the township by a consummated transaction which exceeded the authority of the board, the fact that the transaction was ultra vires does not prevent title from passing to the township. *Pierce Township of Barnes County v. Ernie*, 74 ND 16, 19 NW 2d 755.

Collateral References.

Towns—15 et seq.
52 Am. Jur., Towns and Townships, § 24 et seq.

58-03-02. Powers of township limited.—No township shall possess or exercise any corporate powers except these enumerated in this chapter, those specially given by law, and those necessary to the exercise of the powers enumerated or granted.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 2538; R. C. 1905, § 3059; C. L. 1913, § 9; R. C. 1895, § 2538; R. C. 1899, § 4084; R. C. 1943, § 58-0302.

58-03-06. Township charges and levies.—The following shall be deemed township charges:

1. The compensation of township officers;
2. Contingent expenses necessarily incurred for the use and benefit of the township;
3. The moneys authorized to be raised by the vote of the township meeting for any township purpose;
4. Each sum directed by law to be raised for any township purpose.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 100; R. C. 1895, § 2639; R. C. 1899, § 2639; R. C. 1905, § 3176; C. L. 1913, § 4236; 1925 Supp., § 4236; S. L. 1929, ch. 247, § 1; R. C. 1943, § 58-0306.

Cross-Reference.

Excess levies in townships, see § 57-17.

Collateral References.

Towns 43.

87 C. J. S. Towns, § 11.

58-03-07. Powers of electors.—The electors of each township have the power at the annual township meeting:

1. To establish one or more pounds within the township, to determine the location of the pounds, to determine the number of poundmasters and to choose the poundmasters, and to discontinue pounds which have been established;
2. To select the township officers required to be chosen;
3. To direct the institution or defense of actions in all controversies where the township is interested;
4. To direct the raising of such sums of as they may deem necessary to prosecute or defend actions in which the township is interested;
5. To make all rules and regulations for the impounding of animals;
6. To make such bylaws, rules, and regulations as may be deemed necessary to carry into effect the powers granted to the township;
7. To impose penalties not exceeding ten dollars for each offense on persons offending against any rule or regulation established by the township;
8. To apply penalties when collected in such manner as they deem most conducive to the interests of the township;

9. To ratify or reject recommendations offered by the board of township supervisors for the expenditure of funds for the purpose of purchasing building sites and for the purchase, location, erection, or removal of any building or erection for township purposes. No recommendation shall be adopted except by a two-thirds vote of the electors present and voting at any annual township meeting;
10. To authorize and empower the board of township supervisors to purchase liquids, compounds, or other ingredients for the destruction of noxious weeds, and sprinklers to be used in spraying said liquids or compounds. No township shall purchase more than two such sprinklers in any one year;
11. Repealed by S. L. 1949, ch. 343, § 1;
12. To authorize aid to a district fair association within the limits provided in title 4, Agriculture;
13. To authorize the levy of township taxes for the repair and construction of roads and bridges and for other township charges and expenses within the limits prescribed in title 57, Taxation;
14. To direct the expenditure of funds raised for the repair and construction of roads within the limits provided in title 24, Highways, Bridges, and Ferries;
15. To authorize the dissolution of the township in the manner provided in this title;
16. To authorize the purchase and maintenance of dipping tanks as provided in title 36,* Livestock;
17. To authorize the purchase of township fire-fighting equipment in the manner provided in title 18,** Fires; and to authorize the entering into a contract for fire protection as provided for in section 18-06-10; and
18. To establish a fund for the eradication of gophers, prairie dogs, crows, and magpies.
19. To authorize the expenditure of township funds for weather modification activities.

Source: S. L. 1883, ch. 112, sub. ch. 1, §§ 13, 100, 101, 112, 113; 1895, ch. 91, § 3; R. C. 1895, §§ 2542, 2639, 2640, 2652, 2653, 2670; S. L. 1897, ch. 139, §§ 1 to 3; R. C. 1899, §§ 2542, 2639, 2640, 2652, 2653, 2670, 2680a; S. L. 1901, ch. 151, § 2; 1903, ch. 172, § 1; R. C. 1905, §§ 1540, 3063, 3176, 3193, 3194, 3221; S. L. 1907, ch. 255, § 1; 1909, ch. 223, § 1; 1911, ch. 149, § 1; C. L. 1913, §§ 2012, 2151, 4088, 4236, 4249, 4250, 4277; S. L. 1915, ch. 261, § 1; 1917, ch. 111, § 1; 1919, ch. 231, § 1; 1925 Supp., §§ 2151, 2785a1, 4089a1, 4236; S. L. 1927, ch. 197, § 1; 1927, ch. 199, § 1; 1929, ch. 235, § 8; 1929, ch. 247, § 1; 1931, ch. 302, § 1;

1931, ch. 303, § 1; R. C. 1943, § 58-0307; S. L. 1949, ch. 343, § 1; 1957 Supp., § 58-0307; S. L. 1965, ch. 71, § 14; 1969, ch. 226, § 2.

*Note.

Chapter 36-19, relating to dipping stations, was repealed by section 1 of chapter 254 of the 1965 Session Laws.

**Note.

The provisions of ch. 18-06, relating to purchase of township fire-fighting equipment were repealed by section 14 of chapter 165 of the 1957 Session Laws.

Section		Section	
58-06-01	General powers and duties of board of township supervisors.	58-06-05	Where meetings of board of supervisors held.
58-06-02	Compensation of supervisors.	58-06-06	Quorum of the board.
58-06-03	Regular meetings of board of township supervisors—When held.	58-06-07	Board of township supervisors to elect chairman.
58-06-04	May hold adjourned and special meetings.	58-06-08	Approve bonds of township officers.
		58-06-09	Audit accounts.
		58-06-10	Business with board — When to appear.

*Only §58-06-01 is reproduced

58-06-01. General powers and duties of board of township supervisors.—The board of township supervisors shall have the following powers and duties:

1. To manage and control the affairs of the township not committed to other township officers;
2. To draw orders on the township treasury for the disbursement of township funds;
3. To recommend to the electors the expenditure of a stated amount for the purpose of purchasing building sites, and for purchasing, erecting, locating, or removing any building, township hall, or library building for the use and benefit of the township;
4. When a city which is laid out into streets is included within the limits of the township, to cause improvements to be made in any street that may be needed as a highway if the city neglects to make the improvements;
5. To prosecute all actions upon bonds given to it or previous boards;
6. To sue for and collect all penalties and forfeitures incurred by any officer or inhabitant of the township when no other provision is made;
7. To prosecute any action for trespass committed on any public enclosure, highway, or property belonging to the township;
8. To pay all money collected by it for the township to the township treasurer;
9. To levy the annual taxes for the ensuing year as voted at the annual township meeting;
10. To grant to any person the right of way for the erection of telephone lines, electric light systems, or gas or oil pipeline systems over or upon public grounds, streets, alleys, or highways;
11. To appoint the township overseer of highways;
12. To provide funds for the extermination of bots as provided in title 36,* Livestock;
13. To purchase road machinery and tools;
14. To be and act as a board of health;
15. To perpetuate survey markings;
16. To erect and maintain guideposts on the highways and other ways within the township at such places as are necessary or convenient for the direction of travelers; and
17. To examine, compare, and balance the books of the township clerk and the treasurer at the annual meeting in March of each year;
18. To pay all, or a part of the cost of electricity used in electrically lighting the streets of cities located within the township.

Source: S. L. 1853, ch. 112, sub. ch. 1, §§ 50, 60 to 62, 106; 1855, ch. 47, § 3; R. C. 1895, §§ 1970, 2581, 2593 to 2 900, 2646; S. L. 1899, ch. 140, § 1; 1899 ch. 156, § 1; R. C. 1899, §§ 1115a, 1970, 2581, 2593 to 2600, 2646, 3225a; S. L. 1913, ch. 196, § 1; 1905, ch. 52, § 1; 1965, ch. 180, § 1; R. C. 1905, §§ 1406, 2168, 3116, 3133 to 3135, 3182, 3187, 4633; S. L. 1907, ch. 253, § 2; 1909, ch. 292, § 2.

1911, ch. 288, § 1; 1913, ch. 59, § 9; 1913, ch. 86, § 1; 1913, ch. 92, § 1; C. L. 1913, §§ 1979, 1990m, 2348, 4175, 4192 to 4194, 4242, 4217, 4286, 5114; S. L. 1915, ch. 260, § 1; 1925, ch. 188, § 1; 1925 Supp., §§ 1990m, 5144; S. L. 1929, ch. 225, § 8; 1931, ch. 201, § 1; 1937, ch. 10, § 3; R. C. 1943, § 58-0601; S. L. 1959, ch. 405, § 1; 1967, ch. 323, § 261.

CHAPTER 58-02

CREATION, CONSOLIDATION, DIVISION, AND DISSOLUTION *

Section		Section	
58-02-01	Organization of township — Petition—Election.	58-02-15	Determination of assets and liabilities of territory detached from one civil township and attached to another.
58-02-02	Commissioners report to county auditor.	58-02-16	Determination of net assets of township to which territory is annexed and of annexed territory.
58-02-03	Name of township.	58-02-17	Determination of prorata amount due from annexed territory.
58-02-04	County auditor transmits name and report to state auditor.	58-02-18	Tax levies against territory annexed.
58-02-05	Duty of state auditor when similar names are adopted by different townships.	58-02-19	Division of organized township — Requirements.
58-02-06	First township meeting.	58-02-20	Division made on congressional township lines.
58-02-07	Changing boundary lines of township.	58-02-21	Petition for and notice of application for division—Publication.
58-02-08	Fractional township — Annexing to another township.	58-02-22	Board of county commissioners may establish new township.
58-02-09	Annexing parts of township divided by river from rest of township.	58-02-23	Division of assets and liabilities of the original township.
58-02-10	Division of township in which there are two or more municipalities.	58-02-24	Obligations of original township enforced.
58-02-11	Uniting congressional townships into civil townships.	58-02-25	Dissolution of township—Petition — When considered by supervisors.
58-02-12	Notice to board of supervisors when change is made in township boundaries.	58-02-26	Question of dissolution submitted at annual meeting—Notice.
58-02-13	Obligation to pay taxes assessed or indebtedness incurred prior to township alteration continues.	58-02-27	Vote on question of dissolution—Form of ballot—Result.
58-02-14	Consolidating townships—Majority of supervisors and clerks of townships affected determine amount due.		
Section		Section	
58-02-28	When township dissolved — Disposition of property and records.	58-02-30	Township attached to other assessment district — Levy for payment of township debts.
58-02-29	Personal rights not affected by township dissolution.	58-02-31	Duty of county auditor on dissolution.
		58-02-32	Proof of signatures on petition.

*Only §§ 58-02-07, 58-02-08, 58-02-09, 58-02-10, 58-02-11, 58-02-19, 58-02-20, 58-02-21, 58-02-22, and 58-02-25 are reproduced

58-02-07. Changing boundary lines of township.—The boundary lines of an organized township may be changed only in the manner provided in this chapter.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 7; R. C. 1895, § 2532; R. C. 1899, § 2532; R. C. 1905, § 3053; C. L. 1913, § 4078; R. C. 1943, § 58-0207.

Collateral References.

Towns—6.
52 Am. Jur., Towns and Townships, § 7.
87 C. J. S. Towns, § 15.

58-02-08. Fractional township—Annexing to another township.—The board of county commissioners may attach a fractional congressional township to an adjoining township within the same county or divide it between two or more townships within the same county upon the petition of a majority of the legal voters to be affected.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 2; 1885 Sp., ch. 50, § 1; R. C. 1895, § 2527; R. C. 1899, § 2527; R. C. 1905, § 3048; S. L. 1913, ch. 91, § 1; C. L. 1913, § 4073; R. C. 1943, § 58-0208.

Collateral References.

Towns—7-11.
52 Am. Jur., Towns and Townships, §§ 45, 46.
87 C. J. S. Towns, §§ 18-33.

58-02-09. Annexing parts of township divided by river from rest of township.—If rivers, lakes, or creeks divide a civil or congressional township and make it inconvenient to do township business, the board of county commissioners of the county in which the township is located may annex that part of the township segregated by such river, lake, or creek to an adjoining township in the same county upon the petition of not less than two-thirds of the legal voters residing in the part of the township so segregated.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 2; 1885 Sp., ch. 50, § 1; R. C. 1895, § 2527; R. C. 1899, § 2527; R. C. 1905, § 3048; S. L. 1913, ch. 91, § 1; C. L. 1913, § 4073; R. C. 1943, § 58-0209.

Collateral References.

Towns—8-11.
52 C. J. S. Towns and Townships, §§ 45, 46.
87 C. J. S. Towns, §§ 18-33.

58-02-10. Division of township in which there are two or more municipalities.—The board of county commissioners may divide a township in which there are two or more cities, each containing two hundred or more inhabitants, upon the petition of a majority of the legal voters to be affected. If the division is ordered, it shall be made in the manner best suited to the convenience of the territory concerned.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 2; 1885 Sp., ch. 50, § 1; R. C. 1895, § 2527; R. C. 1899, § 2527; R. C. 1905, § 3048; S. L. 1913, ch. 91, § 1; C. L. 1913, § 4073; R. C. 1943, § 58-0210; S. L. 1967, ch. 323, § 258.

58-02-11. Uniting congressional townships into civil townships.—The board of county commissioners may unite two or more congressional townships into one civil township or may add not more than three congressional townships to any congressional township already organized as a civil township when petitioned to do so by a majority of the legal voters to be affected.

Source: S. L. 1883, ch. 112, sub. ch. 1, § 2; 1885 Sp., ch. 50, § 1; R. C. 1895, § 2527; R. C. 1899, § 2527; R. C. 1905, § 3048; S. L. 1913, ch. 91, § 1; C. L. 1913, § 4073; R. C. 1943, § 58-0211.

tional township which contains more than eighteen sections of land and borders on a lake or river or any congressional township may be set off from the civil township of which it is a part if:

1. There are one hundred or more inhabitants residing in the proposed township; and
2. The division does not leave less than one hundred inhabitants residing in the township from which it is separated.

Source: S. L. 1895, ch. 30, §§ 1 to 3; R. C. 1895, §§ 2533 to 2535; S. L. 1899, ch. 60, § 1; R. C. 1899, §§ 2533 to 2535; R. C. 1905, §§ 3054 to 3056; S. L. 1909, ch. 221, § 1; C. L. 1913, §§ 4079 to 4081; R. C. 1943, § 58-0219.

Division of County.

Where an organized township is di-

vided by the creation of a new county, portion remaining in original county is a continuation of the organized township if it is a fractional township qualifying under this section, and portion included in the new county becomes unorganized territory therein. State ex rel. Stevenson Township v. Nichols, 39 ND 4, 166 NW 813.

58-02-20. Division made on congressional township lines.—The separation of a congressional township or fractional township from an organized civil township shall be made only along congressional township lines.

Source: S. L. 1895, ch. 30, § 1; R. C. 1895, § 2533; S. L. 1899, ch. 60, § 1; R. C. 1899, § 2533; R. C. 1905, § 3054; S. L. 1909, ch. 221, § 1; C. L. 1913, § 4079; R. C. 1943, § 58-0220.

58-02-21. Petition for and notice of application for division.—Publication.—A petition for the division of a township as provided in section 58-02-19, addressed to the board of county commissioners and signed by a majority of the legal voters residing within the proposed township may be presented to the board at any regular meeting thereof.

Notice of the time and place of the hearing on such petition shall be given at least thirty days prior to such hearing by the publication of such notice at least three times in the newspaper in which the proceedings of the board of county commissioners are published, or if there is no such newspaper, the notice shall be posted in at least three public places in the proposed new township and in at least three public places in the remainder of the township affected by the division. One of such notices shall be posted at the place where the last township election was held for the township from which the separation is sought.

Source: S. L. 1895, ch. 30, § 2; R. C. 1895, § 2534; S. L. 1899, ch. 60, § 1; R. C. 1899, § 2534; R. C. 1905, § 3055; C. L. 1913, § 4080; R. C. 1943, § 58-0221; S. L. 1909, ch. 221, § 1; C. L. 1913, § 4079; R. C. 1943, § 58-0220.

58-02-22. Board of county commissioners may establish new township.—Upon presentation of the petition described in section 58-02-21, together with proof of notice, as provided in such section, of the existence of the requirements for division and proof that the petition was signed by the requisite number of voters residing in the proposed township, the board of county commissioners shall set off the congressional township or fractional township described in the petition as a separate civil township.

Source: S. L. 1895, ch. 30, § 3; R. C. 1895, § 2535; R. C. 1905, § 3056; C. L. 1895, § 2535; S. L. 1899, ch. 60, § 1; R. C. 1899, § 2535; R. C. 1905, § 3055; C. L. 1913, § 4081; R. C. 1943, § 58-0222.

58-02-25. Dissolution of township.—Petition.—When considered by supervisors.—If a petition asking for the dissolution of an organized civil township and setting forth the reasons therefor, and signed by one-half of the legal voters of such township, is presented to the board of township supervisors at least ten days prior to the second Tuesday in March in any year, the petition shall be considered by such board at its regular meeting on the second Tuesday in March in such year.

Source: S. L. 1897, ch. 139, §§ 1 to 3; R. C. 1899, § 2680a; R. C. 1905, § 3221; C. L. 1913, § 4277; S. L. 1931, ch. 302, § 1; R. C. 1943, § 58-0225.

Collateral References.

Towns—14.
52 Am. Jur., Towns and Townships, § 45.
87 C. J. S. Towns, § 17.

CHAPTER 58-15

POLICE IN UNINCORPORATED TOWNSITE *

Section		Section	
58-15-01	Petition for policeman in townsite — Contents of petition.	58-15-04	Powers, duties, and authority of policeman.
58-15-02	Tax levy for policeman—Certification—Extension.	58-15-05	Police officer paid monthly.
58-15-03	Bond of policeman—Removal by board.	58-15-06	When tax levy and appointment not to be made.
		58-15-07	Collection, payment, and account of taxes.

58-15-01. Petition for policeman in townsite—Contents of petition.—If sixty percent of the electors residing within the limits of any platted unincorporated townsite shall petition the board of supervisors of the township in which it, or the greater portion thereof, is situated, praying for the appointment of a policeman to serve as a night watchman in such townsite and for the levy of a tax on the property therein to pay such officer, and stating the period for which the appointment is to be made, and the name of the townsite for which such police officer is to be appointed, the board of township supervisors shall appoint such officer for the period designated in the petition and fix his compensation.

Source: S. L. 1905, ch. 185, § 1; R. C. 1905, § 2901; C. L. 1913, § 3907; R. C. 1943, § 58-1501; S. L. 1967, ch. 323, § 263.

58-15-04. Powers, duties, and authority of policeman.—A policeman appointed under this chapter shall have the same powers, duties, and authority as the constable of the township. During the period for which he is appointed, the policeman shall patrol the unincorporated township each night, and shall guard against fire, theft, and burglary, preserve the peace, and execute the laws of this state.

Source: S. L. 1905, ch. 185, § 5; R. C. 1905, § 2905; C. L. 1913, § 3911; R. C. 1943, § 58-1504; S. L. 1967, ch. 323, § 266.

Cross-Reference.

Constable's powers, see §§ 58-10-03, 58-10-04.

*Only §§ 58-15-01 and 58-15-04 are reproduced

CHAPTER 58-16

SIDEWALK CONSTRUCTION AND STREET LIGHT INSTALLATION IN UNINCORPORATED TOWNSITE *

Section 58-16-01	Petition for construction of sidewalks or installation of street lights in unincorporated townsites—Contents— Ordering construction or installation.	Section 58-16-02	Notice to owner to construct sidewalk — Failure to construct.
		58-16-03	Assessment and levy upon property—Form.
Section 58-16-04	Petition for repair or reconstruction of a sidewalk or street lights—Procedure followed.	Section 58-16-05	Township supervisors to prescribe material for construction or repair of sidewalks or street lights, and to prescribe the type of light fixture to be used.

58-16-01. Petition for construction of sidewalks or installation of street lights in unincorporated townsites—Contents—Ordering construction or installation.—When a majority of the lot owners on any street in any block within the platted limits of an unincorporated township shall petition the board of supervisors of the township in which the unincorporated townsite, or the greater portion thereof, is situated, praying that a sidewalk be constructed or street lights be installed along the side of a street or thoroughfare within the platted limits described in the petition, the board, by resolution, shall order the construction of the sidewalk or a portion thereof by the owner of the land along which the sidewalk is to be built, if it appears that the sidewalk described and prayed for in the petition is necessary to connect sidewalks already built or that public convenience and necessity require its construction, and shall order and make all necessary contracts and arrangements for the installation of street lights if the public convenience or necessity require the installation.

Source: S. L. 1915, ch. 265, § 1; 1925 S. L. 1957, ch. 370, § 1; 1957 Supp., § 3913a1; R. C. 1943, § 58-1601; § 58-1601; S. L. 1967, ch. 323, § 268.

*Only § 58-16-01 is reproduced

40-01-03. Judicial notice of existence and change of organization to be taken by courts.—Courts shall take judicial notice of the existence of a municipality by the name and style designated at the time of its incorporation, and of the change of the form of the organization of any municipality from its original form to any other type of organization provided by this title.

Source: Pol. C. 1877, ch. 24, § 9; S. L. § 8; R. C. 1905, §§ 2639, 2851; S. L. 1907, 1887, ch. 73, art. 1, § 4; 1893, ch. 129, ch. 45, § 5; 1911, ch. 77, § 5; C. L. 1913, § 1; R. C. 1895, §§ 2111, 2352; R. C. §§ 3560, 3775, 3848; R. C. 1943, § 40-0103. 1899, §§ 2111, 2352; S. L. 1905, ch. 62,

40-01-04. Vested rights.—All rights and property of every kind and description vested in any municipal corporation previous to any change in its form of organization shall be vested in the same municipal corporation upon its being incorporated under a different type of organization as provided by this title. No rights or liabilities in favor of or against such corporation existing at the time of a change in the form of its organization, and no action or prosecution of any kind shall be affected by such change, but the same shall stand and progress as if no change had been made. When by reason of a change in the form of organization, there is made available a different remedy which is applicable to any right existing before such change became effective, such remedy shall be additional to the remedies theretofore provided.

Source: S. L. 1887, ch. 73, art. 1, § 6; § 2641; S. L. 1907, ch. 45, § 7; 1911, ch. R. C. 1895, § 2113; R. C. 1899, § 2113; 77, § 7; C. L. 1913, §§ 3562, 3777; R. C. S. L. 1905, ch. 62, § 10; R. C. 1905, 1943, § 40-0104.

40-01-05. Ordinances and resolutions remain in force.—Legal identity not changed.—A change in the form of organization of a municipality shall not change its legal identity as a municipal corporation. All ordinances and resolutions in force therein at the date of such change shall continue in full force and effect until repealed or amended.

Source: S. L. 1887, ch. 73, art. 1, § 8; R. C. 1895, § 2115; R. C. 1899, § 2115; S. L. 1905, ch. 62, § 12; R. C. 1905, § 2643; S. L. 1907, ch. 45, § 8; 1911, ch. 77, § 8; C. L. 1913, §§ 3564, 3778; R. C. 1943, § 40-0105; S. L. 1955, ch. 88, § 4; 1957 Supp., § 40-0105.

Cross-Reference.

Existing ordinances and regulations to remain in force after code takes effect, see § 1-02-32.

CHAPTER 40-03.1

CHANGE FROM COUNCIL SYSTEM TO COMMISSION SYSTEM

Section		Section	
40-03.1-01	Change from council system of government — Petition required.	40-03.1-03	Procedure when petition to change from council system of government is filed —Special election—Ballot.
40-03.1-02	City auditor to pass on sufficiency of petition.		

40-03.1-01. Change from council system of government—Petition required.—Any city which shall have operated for more than six years since the adoption of the city council system of government or since the last election at which the question of changing from the council system was rejected by the voters, may change its organization thereunder and adopt the city commission form of government. The proceeding to change shall be initiated by a petition asking for such change signed by not less than forty percent of the electors of the city. For the purpose of this section the term "qualified electors of the city" shall mean the total number of electors voting at the preceding general election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, shall contain the name, address and age of each petitioner, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

Source: S. L. 1961, ch. 271, § 1.

Decision under Prior Law.

The board of city commissioners of a city having the commission system of government succeeds to the powers possessed by the mayor and the city council in a city having the council form of government. *Waslien v. City of Hillsboro*, 48 ND 1113, 188 NW 738.

Collateral References.

Municipal Corporations—12-22, 62.
37 Am. Jur., Municipal Corporations,
§§ 7-17, 20, 74.
62 C. J. S. Municipal Corporations,
§§ 7-28, 88-90, 139, 279.

Law Review.

Powers and Procedures of City and Village Governing Boards, 31 N. D. L. Rev. 137.

40-03.1-02. City auditor to pass on sufficiency of petition.—Within thirty days after a petition to change from the council system of government is filed, the city auditor shall examine the petition and ascertain from the voters' register whether or not the petition is signed by the required number of qualified signers. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient his certificate shall show the reason for such determination. An insufficient petition may be amended within ten days after the auditor's certificate is made. Within thirty days after an amended petition is filed, the auditor shall make an examination thereof, and if his certificate shows such amended petition to be insufficient, the petition shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same with his certificate before the governing body of the municipality.

Source: S. L. 1961, ch. 271, § 2.

40-03.1-03. Procedure when petition to change from council system of government is filed.—Special election.—Ballot.—When a petition to change from the council system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a municipality, the governing body shall call a special election at which only the question of changing from the council system of government will be submitted. The date of such election shall not be less than thirty days nor more than ninety days after the date of the auditor's certificate has been filed. The election shall be conducted, returns thereof made, and the result thereof declared in all respects as are other city elections. Notice of such election shall be given by the publication of the proposition to be voted upon, the places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of such election. The ballot to be used at the election provided for in this section shall be in substantially the following form:

Shall the city of _____ change from its organization under the council system of government and become a city under the commission form of government?

Yes ☐

No ☐

Source: S. L. 1961, ch. 271, § 3.

Collateral References.

Elections—39-42.

25 Am. Jur. 2d, Elections, §§ 183-199.

29 C. J. S. Elections, §§ 71-75.

Comment note: Statutory provision as to manner and time of notice of special election as mandatory or directory, 119 ALR 661.

Special election, validity of, as affected by publication or dissemination of matter or information extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 ALR 1142.

Failure of officers to give notice of election as a punishable offense, 134 ALR 1257.

CHAPTER 40-03.2—CHANGE FROM COUNCIL SYSTEM TO MODERN COUNCIL SYSTEM

Section	Section
40-03.2-01 Change from council system of government—Petition required.	40-03.2-03 Procedure when petition to change from council system of government is filed—Special election—Ballot.
40-03.2-02 City auditor to pass on sufficiency of petition.	

1973 SUPP.

40-03.2-01. Change from council system of government—Petition required.—Any city incorporated as a city under the council form of government may change its organization thereunder and adopt the modern council form of government. The proceeding to change shall be initiated by a petition asking for such change signed by not less than one-third of the qualified electors of the city. For the purpose of this section the term "qualified electors of the city" shall mean the total number of electors voting at the preceding general election of the city. The signatures to such petition need not be contained in a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, shall contain the address of each petitioner, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

Source: S. L. 1969, ch. 366, § 1.

40-03.2-02. City auditor to pass on sufficiency of petition.—Within thirty days after a petition to change from the council system of government is filed, the city auditor shall examine the petition and ascertain from the voters' register whether or not the petition is signed by the required number of qualified signers. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient his certificate shall show the reason for such determination. An insufficient petition may be amended within ten days after the auditor's certificate is made. Within thirty days after an amended petition is filed, the auditor shall make an examination thereof, and if his certificate shows such amended petition to be insufficient, the petition shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same with his certificate before the governing body of the municipality.

Source: S. L. 1969, ch. 366, § 2.

40-03.2-03. Procedure when petition to change from council system of government is filed—Special election—Ballot.—When a petition to change from the council system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a municipality, the governing body shall call a special election at which only the question of changing from the council system of government will be submitted. The date of such election shall not be less than thirty days nor more than ninety days after the date of the auditor's certificate has been filed. The election shall be conducted, returns thereof made, and the result thereof declared in all respects as are other city elections. Notice of such election shall be given by the publication of the proposition to be voted upon, the places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of such election. The ballots to be used at the election provided for in this section shall be in substantially one of the following forms:

Shall the city of _____ change from its organization under the council system of government and becomes a city under the modern council form of government with a five-man council?

Shall the city of _____ change from its organization under the council system of government and become a city under the modern council form of government with a seven-man council?

Yes ☐
No ☐

Shall the city of _____ change from its organization under the council system of government and become a city under the modern council form of government with an eleven-man council?

Yes ☐
No ☐

Source: S. L. 1969, ch. 366, § 3.

CHAPTER 40-04

COMMISSION CITIES, INCORPORATION FROM ORGANIZED TERRITORY AND CHANGE FROM COMMISSION SYSTEM TO COUNCIL SYSTEM

Section		Section	
40-04-01	Incorporation as commission city.	40-04-08	Change from commission system of government — Petition required.
40-04-02	Notice of election.	40-04-09	City auditor to pass on sufficiency of petition to change from commission system of government.
40-04-03	Form of ballot.	40-04-10	Procedure when petition to change from commission system of government is filed — Special election — Ballot.
40-04-04	Returns and canvass of election — Certificate to secretary of state — Officers to continue until election.	40-04-11	Procedure when election favors changing from commission system of government.
40-04-05	Patent issued to city by governor.		
40-04-06	Patent to city to be recorded — Use as evidence.		
40-04-07	Special election called to elect city commissioners.		

40-04-01. Incorporation as commission city.—Any city in this state having a population of not less than five hundred inhabitants may become incorporated as a city under the commission system of government in the following manner: whenever one-tenth of the electors of such municipality, based upon the votes cast for the office of governor at the last preceding general election, shall petition the governing body of such municipality to submit to a vote of the electors the question whether such city shall become incorporated as a city under the commission system of government, the governing body shall submit such question to the electors, appoint a time when and place or places where the election shall be held, and designate the judges and clerks

at such election. Such question shall not be submitted more than once in every four years.

Source: S. L. 1907, ch. 45, § 1; 1911, ch. 77, § 1; 1913, ch. 72, § 1; C. L. 1913, § 3771; S. L. 1915, ch. 66, § 1; 1925 Supp., § 3771; R. C. 1943, § 40-0401; S. L. 1967, ch. 323, § 112.

62 C. J. S. Municipal Corporations, §§ 50-64.

Nonregistration as affecting one's qualification as signer of petition for special election, 100 ALR 1308.

Withdrawal of name from petition and time therefor, 126 ALR 1031; 27 ALR 2d 604.

Collateral References.

Municipal Corporations—26-39.

25 Am. Jur. 2d, Elections, §§ 185, 196.

40-04-02. Notice of election.—Notice of an election to be held under this chapter shall be given by the executive officer of the municipality by publication in the official newspaper of the municipality for at least twenty days, or, if no newspaper is published therein, such notice shall be given in the official county newspaper.

Source: S. L. 1907, ch. 45, § 2; 1911, ch. 77, § 2; C. L. 1913, § 3772; R. C. 1943, § 40-0402; S. L. 1967, ch. 158, § 98.

to manner and time of notice of special election as mandatory or directory, 119 ALR 661.

Special election, validity of, as affected by publication or dissemination of matter or information extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 ALR 1142.

Failure of officers to give notice of election as a punishable offense, 134 ALR 1257.

Collateral References.

Municipal Corporations—33(4)

25 Am. Jur. 2d, Elections, §§ 183-199.

62 C. J. S. Municipal Corporations, § 19.

Comment note: Statutory provision as

40-04-03. Form of ballot.—The ballots to be used at such election shall be in substantially the following form:

Shall the city of _____ (naming the city) become organized as a city under the commission system of government?

Yes ☐

No ☐

Source: S. L. 1907, ch. 45, § 3; 1911, ch. 77, § 3; C. L. 1913, § 3773; R. C. 1943, § 40-0403; S. L. 1967, ch. 323, § 113.

40-04-04. Returns and canvass of election.—Certificate to secretary of state.—Officers to continue until election.—The officials of an election held under the provisions of this chapter shall make a return of such election to the governing body of the city and such governing body shall canvass such returns and cause the result of the canvass to be entered upon the records of the city. If a majority of the votes cast at such election shall be for city organization under the commission system, the auditor shall certify the adoption of such form of government and a copy of the proceedings concerning the same to the secretary of state together with the result of any special census taken in such city. The city officers then in office shall exercise the powers conferred upon like officers of a city operating under the commission system of government until their successors are elected and qualified.

Source: N.D.C.C.; S. L. 1973, ch. 80, § 10.

40-04-05. Patent issued to city by governor.—Upon the certification of the matters described in the preceding section, the government shall issue letters patent, under the great seal of the state, reciting the facts, defining the boundaries of the city, and constituting the city a body corporate and politic by the name of the city of ----- (specifying the name of the city), and declaring that it shall be governed by the provisions of this title applicable to cities under the commission system of government.

Source: S. L. 1907, ch. 45, §§ 3, 9, 10; 1911, ch. 77, §§ 3, 9, 10; C. L. 1913, §§ 3773, 3779, 3780; R. C. 1943, § 40-0405.

40-04-06. Patent to city to be recorded.—Use as evidence.—A patent issued by the governor under the provisions of this chapter shall be recorded in the office of the secretary of state in a book kept for that purpose. Any patent so issued and recorded and the record thereof, or a certified copy thereof, shall be conclusive evidence in all courts and places of the due incorporation of the city mentioned therein and of all the facts therein recited.

Source: S. L. 1907, ch. 45, § 11; 1911, ch. 77, § 11; C. L. 1913, § 3781; R. C. 1943, § 40-0406.

40-04-07. Special election called to elect city commissioners.—Within twenty days after the issuance of a patent incorporating any city under the provisions of this chapter, the executive officer of the city voting such incorporation shall call a special election for the purpose of electing the first board of city commissioners. The election shall be held as provided in section 40-21-02.

Source: S. L. 1907, ch. 45, § 4; 1911, ch. 77, § 4; C. L. 1913, § 3774; R. C. 1943, § 40-0407; S. L. 1967, ch. 323, § 115.

40-04-08. Change from commission system of government.—Petition required.—Any city which shall have operated for more than six years under the city commission system of government may change its organization thereunder and adopt the city council form of government or the modern council form of government. The proceeding to change shall be initiated by a petition asking for such change signed by not less than forty percent of the electors of the city. For the purpose of this section the term "qualified electors of the city" shall mean the total number of electors voting at the preceding general election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to

administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, shall contain the name of the street upon and the number of the house in which each petitioner resides, and the length of his residence in the city. Any petitioner shall be permitted to withdraw his name from a petition within five days after the petition is filed.

Source: S. L. 1911, ch. 67, § 5; 1913, ch. 79, § 5; C. L. 1913, § 3839; R. C. 1943, § 40-0408; S. L. 1957, ch. 275, § 1; 1957 Supp., § 40-0408; S. L. 1959, ch. 301, § 1; 1961, ch. 273, § 1; 1965, ch. 285, § 10.

Decision under Prior Law.

A petition for an election to vote upon the question of whether a city operating

under the commission form of government should abandon its organization under the commission system and return to the aldermanic system of city government had to be signed by not less than forty percent of the electors of the city at the time the petition was presented. State ex rel. Alexander v. Evan-son, 64 ND 603, 255 NW 98.

40-04-09. City auditor to pass on sufficiency of petition to change from commission system of government.—Within thirty days after a petition to change from the commission system of government is filed, the city auditor shall examine the petition and ascertain whether or not the petition is signed by the required number of signers. He shall attach to the petition his certificate showing the result of his examination, and if he finds the petition to be insufficient his certificate shall show the reason for such determination. An insufficient petition may be amended within ten days after the auditor's certificate is made. Within thirty days after an amended petition is filed, the auditor shall make an examination thereof, and if his certificate shows such amended petition to be insufficient it shall be returned to the person filing the same without prejudice to the filing of a new petition. If the auditor shall find the petition or the amended petition to be sufficient, he shall place the same, with his certificate, before the governing body of the municipality.

Source: S. L. 1911, ch. 67 § 5; 1913, ch. 79, § 5; C. L. 1913, § 3839; R. C. 1943, § 40-0409; S. L. 1961, ch. 273, § 2.

40-04-10. Procedure when petition to change from commission system of government is filed—Special election—Ballot.—When a petition to change from the commission system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a municipality, the governing body shall call a special election at which only the question of changing from the commission system of government will be submitted. The date of such election shall not be less than thirty days nor more than ninety days after the date of the auditor's certificate that a sufficient petition has been filed. The election shall be conducted, returns thereof made, and the result thereof declared in all respects as are other city elections. Notice of such election shall be given by the publication of the proposition to be voted upon, the

places where the election will be held, and the date of the election, in each newspaper published in the city, not more than twenty days and not less than five days before the date of such election. The ballot to be used at the election provided for in this section shall be in substantially the following form:

Shall the city of _____ change from its organization under the commission system of government and become a city under the council form of government?

Yes ☐

No ☐

Shall the city of _____ change from its organization under the commission system of government and become a city under the modern council form of government with a five-man council?

Yes ☐

No ☐

Shall the city of _____ change from its organization under the commission system of government and become a city under the modern council form of government with a seven-man council?

Yes ☐

No ☐

Shall the city of _____ change from its organization under the commission system of government and become a city under the modern council form of government with an eleven-man council?

Yes ☐

No ☐

Source: S. L. 1911, ch. 67, § 5; 1913, § 40-0410; S. L. 1961, ch. 273, § 3; 1965, ch. 79, § 5; C. L. 1913, § 3839; R. C. 1943, ch. 285, § 12.

40-04-11. Procedure when election favors changing from commission system of government.—If a majority of the votes cast at the election provided for in section 40-04-10 favor the proposition submitted at such election, the officers elected at the next biennial election shall be those prescribed by the provisions of this title relating to cities organized under the city council form of government. Upon the qualification of such officers, the city shall become a city under the council form of government.

Source: S. L. 1911, ch. 67, § 5; 1913, ch. 79, § 5; C. L. 1913, § 3839; R. C. 1943, § 40-0411.

CHAPTER 40-04.1

MODERN COUNCIL FORM OF GOVERNMENT

Section 40-04.1-01	City council — Who constitutes—Terms.	Section 40-04.1-02	Compensation of councilmen.
Section 40-04.1-03	Vacancies on city council—How filled.	Section 40-04.1-05	Meetings — Regular, special, and for organization.
40-04.1-04	Restrictions on council member.	40-04.1-06	Mayor.
		40-04.1-07	Council—Duties and powers.

40-04.1-01. City council—Who constitutes—Terms.—The governing body of a city operating under the modern council form of government shall be the city council, which shall be composed of five members one of whom shall be the mayor all elected at large or a city council composed of seven members, four of whom shall be elected by wards, and three of whom, including the one serving as mayor shall be elected at large. Candidates for the council shall run for either mayor or councilman but not both at the same time. The mayor shall be elected at large or, a city council composed of eleven members, seven of whom shall be elected by wards and four of whom, including the one serving as mayor, shall be elected at large. Candidates for the council shall run for either mayor or councilman but not both at the same time. The mayor shall be elected at large. When a city first adopts a modern council form of government in cities electing five council members, the candidates having the three highest number of votes shall be elected for a four-year term and the other two for a two-year term. In cities electing seven or eleven council members, the candidates, by means of their nominating petitions, must announce their intentions to seek a ward seat or an at-large seat, or the mayor's seat. A candidate seeking a ward seat shall be a resident of such ward. When a city first adopts a modern council form of government in cities electing seven members, the elected mayor candidate and the elected candidates from the four wards shall be elected for a four-year term and the three at-large elected candidates for a two-year term. When a city first adopts a modern council form of government in cities electing eleven members, the elected mayor candidate and the elected candidates from the seven wards shall be elected for a four-year term and the three at-large elected candidates for a two-year term. Thereafter the terms of members of the council shall be four years, or until their successors are elected and qualified.

Source: S. L. 1965, ch. 285, § 1.

Law Review.

Collateral References.

Municipal Corporations—80-85.

§7 Am. Jur., Municipal Corporations,

§§ 43-71.

§62 C. J. S. Municipal Corporations, ,

§§ 385-410.

Villanueva, Towards Home Rule for North Dakota Cities, 42 N. D. L. Rev. 164.

40-04.1-02. Compensation of councilmen.—The members of the council shall receive such compensation for their services as shall be fixed by ordinance, but not more than the maximum provided for the members of the governing board under any other form of city government, except in the cities adopting the eleven-member modern council the maximum compensation shall be eighty-five dollars per month,

Source: S. L. 1965, ch. 285, § 2.

40-04.1-03. Vacancies on city council—How filled.—If a vacancy occurs in the office of councilman by death, resignation or otherwise, the city may call a special election to fill such vacancy for the unexpired term or may after fifteen days of the date of such vacancy appoint a person from the ward or city at large by which the councilman previously holding was elected or appointed to fill such vacancy until the next city election, at which election the unexpired term shall be filled.

Source: S. L. 1965, ch. 285, § 3.

40-04.1-04. Restrictions on council member.—No city councilman shall be eligible to any other office the salary of which is payable out of the city treasury, nor shall he hold any other office under the city government.

Source: S. L. 1965, ch. 285, § 4.

40-04.1-05. Meetings—Regular, special, and for organization.—The city council shall hold its regular meetings on the first Monday of each and every month, and may prescribe by ordinance the manner in which special meetings may be called. The first meeting for the organization of the city council shall be held on the third Tuesday in April of each even-numbered year.

Source: S. L. 1965, ch. 285, § 5.

40-04.1-06. Mayor.—The mayor shall preside at meetings of the council, and be the recognized head of the city for all ceremonial purposes and by the governor for purposes of military law. He shall continue to have all the rights and privileges as a member of the council. If a vacancy occurs in the office of mayor or if the incumbent is absent or disabled, a mayor pro tempore shall be selected by the council from among their number to act for the unexpired term or during continuance of the absence or disability.

Source: S. L. 1965, ch. 285, § 6.

40-04.1-07. Council—Duties and powers.—The council shall perform all duties prescribed by law or by city ordinances and shall see that the laws and ordinances are faithfully executed.

Source: S. L. 1965, ch. 285, § 7.

CHAPTER 40-08

GOVERNING BODY AND EXECUTIVE OFFICER IN COUNCIL CITIES

Section		Section	
40-08-01	City council—Who constitutes.	40-08-16	Vacancy in office of mayor— Filled by election or by council—President of coun- cil to be acting mayor.
40-08-02	Governing body is judge of election and qualifications of members.	40-08-17	Absence or disability of mayor—Who to be acting mayor.
40-08-03	Number of aldermen deter- mined by population—Cen- sus to govern.	40-08-18	Mayor to preside at council meetings—Voting power of mayor.
40-08-04	Election of aldermen.	40-08-19	Mayor may remove appointive officers — Reasons for re- moval to be given.
40-08-05	Qualifications of aldermen.	40-08-20	Mayor may suppress disorder and keep peace.
40-08-06	Term of office of aldermen— Staggered terms provided for.	40-08-21	Release of prisoners by mayor —Report to council.
40-08-07	Compensation of aldermen.	40-08-22	Mayor to perform duties pre- scribed by law — Enforce laws and ordinances.
40-08-08	Vacancies on council—How filled.	40-08-23	Inspection of books, records, and papers of city by mayor.
40-08-09	Restrictions on members of council.	40-08-24	Ordinance or resolution signed or vetoed by mayor.
40-08-10	Meetings of council—Regular, special, and for organiza- tion.	40-08-25	Messages to council.
40-08-11	When president and vice- president of council elected.	40-08-26	Mayor may call on male in- habitants to aid in enforce- ing ordinances.
40-08-12	Publication of proceedings.	40-08-27	Police chief and policemen ap- pointed by mayor.
40-08-13	Presiding officer of council in absence or disability of mayor—President of coun- cil.	40-08-28	Mayor may administer oaths.
40-08-14	Mayor—Qualifications—Term.		
40-08-15	Compensation of mayor.		

CHAPTER 40-08—GOVERNING BODY AND EXECUTIVE OFFICER IN COUNCIL CITIES

Section		Section	
40-08-03	Number of aldermen deter- mined by population—Cen- sus to govern.	40-08-06	Term of office of aldermen— Staggered terms provided for in cities where other than ten aldermen elected.
40-08-03.1	Change to ten aldermen and mayor—Petition required.	40-08-06.1	Terms of office under ten aldermen — Staggered terms provided for — Nominating petition re- quirements.
40-08-03.2	City auditor to pass on suffi- ciency of petition request- ing change to ten aldermen and mayor.	40-08-07	Compensation of aldermen.
40-08-04	Election of aldermen.	40-08-10	Meetings of council—Regular, special, and for organization.
40-08-04.1	Procedure when petition to change to ten aldermen and mayor is filed — Special election — Ballot.	40-08-12	Publication of proceedings.

1973 SUPPLEMEN.

CHAPTER 40-09

GOVERNING BODY AND EXECUTIVE OFFICER IN COMMISSION CITIES

Section		Section	
40-09-01	Board of city commissioners —Who constitutes.	40-09-10	How vacancies in board filled.
40-09-02	Governing body is judge of election and qualifications of members.	40-09-11	Meetings of board — Regular and special—Action on departmental matters.
40-09-03	Regulations governing election of commissioners.	40-09-12	Departments of administration of city divided among commissioners—Duties.
40-09-04	Commissioners—Terms of office—Terms of members of first board—Resignations.	40-09-13	Accounts—Audited by respective commissioners — Approved by board.
40-09-05	President and board of commissioners succeed to powers and duties of mayor and council.	40-09-14	Rules and regulations governing departments and agencies of city made by board.
40-09-06	Style of board—Oath and salary of commissioners.	40-09-15	Special police — President of board may call—Powers.
40-09-07	Bond and oath of commissioner.	40-09-16	Board may summon and compel attendance of witnesses and books—Punish for contempt—Process.
40-09-08	President of board as executive officer — Duties — No veto power.	40-09-17	Restrictions on members of board.
40-09-09	Vice-president and acting president of board—Powers to act.		

CHAPTER 40-10

CITY MANAGER PLAN

Section		Section	
40-10-01	Petition for city manager — Contents — Notice of election—Election.	40-10-04	Removal of city manager— Summary proceedings — Charges brought— Suspension—Absence or disability of city manager.
40-10-02	Vote required to adopt plan— When plan effective after adoption.	40-10-05	Powers of governing body.
40-10-03	City manager—How selected — Qualifications — Compensation—Term.	40-10-06	Duties of city manager.
		40-10-07	Conflict of powers and duties of city manager and other officers—Who to govern.
		40-10-08	Election to determine question of retention of city manager plan—Procedure thereafter.

40-10-01. Petition for city manager—Contents—Notice of election—Election.—Twenty-five percent or more of the qualified electors of a city, as shown by the number of votes cast for the executive officer of the city at the preceding city election, may petition for the city manager of government. Within thirty days after such petition is filed with the city auditor, the governing body of the city shall provide for the submission of such proposal to the voters of the city at an election to be held within ninety days after such filing. The city auditor shall give thirty days' notice of the date of the election and of the purposes thereof. The notice of election shall state briefly the powers of the city manager if the plan should be adopted. The election shall be held, the votes canvassed, and the results declared in the same manner as in the case of city elections.

Source: S. L. 1919, ch. 80, § 1; 1925 Supp., § 3770b1; S. L. 1933, ch. 172, § 2; R. C. 1943, § 40-1001.

Collateral References.

Municipal Corporations—48(1, 2).
25 Am. Jur. 2d, Elections, §§ 183-199.
62 C. J. S. Municipal Corporations, §§ 88-100.

Nonregistration as affecting one's qualification as signer of petition for special election, 100 ALR 1308.

Comment note: Statutory provision as to manner and time of notice of special

election as mandatory or directory, 119 ALR 661.

Special election, validity of, as affected by publication or dissemination of matter or information extrinsic to the question as submitted, regarding nature or effect of the proposal, 122 ALR 1142.

Withdrawal of name from petition and time thereof, 126 ALR 1031; 27 ALR 2d 604.

Failure of officers to give notice of election as a punishable offense, 134 ALR 1257.

40-10-02. Vote required to adopt plan—When plan effective after adoption.—If four-sevenths of the vote cast at the election favor the

adoption of the city manager plan, the governing body shall declare the plan adopted, and shall fix the date when the same shall go into effect. Such date shall be after the first regular meeting of the governing body in the month of May following the election.

Source: S. L. 1919, ch. 80, § 2; 1925 62 C. J. S. Municipal Corporations, Supp., § 3770b2; S. L. 1933, ch. 172, § 3; §§ 88-100.
R. C. 1943, § 40-1002.

Collateral References.

Municipal Corporations—48(1, 2).

25 Am. Jur. 2d, Elections, §§ 309-315.

Constitutional or other special proposition submitted to voters, basis for computing majority essential to adoption, 131 ALR 1382.

40-10-03. City manager — How selected—Qualifications—Compensation—Term.—The city manager shall be the chief administrative officer of the city and shall be chosen by the governing body solely on the basis of his qualifications. The choice shall not be limited to the inhabitants of the city or state, and a majority vote of the members of the governing body shall be necessary to make the choice. The city manager shall receive a compensation of not less than one thousand dollars a year and shall be chosen for an indefinite term.

Source: S. L. 1919, ch. 80, § 3; 1925 Supp., § 3770b3; S. L. 1933, ch. 172, § 4;
R. C. 1943, § 40-1003.

40-10-04. Removal of city manager—Summary proceedings—Charges brought—Suspension—Absence or disability of city manager.—The city manager may be removed from office summarily by the governing body at any time within six months after his appointment. After that period, he may be removed only pursuant to written charges made and filed with the city auditor by the executive officer or by some member of the governing body. Upon the filing of the charges, the city manager, if he desires a hearing thereon, shall file a written demand for such hearing within three days after the notice of the filing of such charges has been served upon him. In the absence of such demand, he shall be deemed to have waived a hearing, but he shall not be removed finally until a hearing is had or waived. Pending such hearing or the waiver thereof, he may be suspended by the governing body. During the absence or disability of the city manager, the governing body shall designate some properly qualified person to perform the duties of his office. The decision of the governing body on the selection or removal of a city manager or of a person to perform the duties of such office shall be final.

Source: S. L. 1919, ch. 80, § 3; 1925 Supp., § 3770b3; S. L. 1933, ch. 172, § 4;
R. C. 1943, § 40-1004.

40-10-05. Powers of governing body.—The governing body shall have in addition to other powers granted by law the following powers:

1. It may inquire into the conduct of any office, department, or agency of the city;

2. It may by ordinance establish, change and abolish offices, departments and agencies, other than those required by law, and may add to or take away from the duties of the various offices, departments and agencies.

Source: S. L. 1919, ch. 80, § 4; 1925 R. C. 1943, § 40-1005; S. L. 1951, ch. 262, Supp., § 3770b4; S. L. 1933, ch. 172, § 5; § 1; 1957 Supp., § 40-1005.

40-10-06. Duties of city manager.—The city manager shall have the following duties:

1. He shall be responsible to the governing body of the municipality for the proper administration of all of the affairs of the city;
2. He shall prepare and submit to the governing body an annual preliminary budget as provided for under chapter 40-40, and shall be responsible for the administration of the final budget, subject to the control of the governing body as to changes in the same;
3. He shall be responsible for law enforcement;
4. He shall appoint and remove, subject to civil service regulations if in effect, all heads of administrative departments and employees of the city; provided, however, he shall neither appoint nor remove the head of any department without first consulting with the governing body;
5. He shall keep the governing body advised of the financial condition of the city and make such recommendations as may seem desirable; and
6. He shall be responsible for the purchase of all supplies, materials and equipment for the operations of the city, provided that for any purchase the cost of which exceeds one thousand dollars, the governing body shall establish the procedure for purchasing the same.

1973 SUPPLEMENT

Source: S. L. 1919, ch. 80, § 4; 1925 R. C. 1943, § 40-1006; S. L. 1951, ch. 262, Supp., § 3770b4; S. L. 1933, ch. 172, § 5; § 2; 1957 Supp., § 40-1006.

40-10-07. Conflict of powers and duties of city manager and other officers—Who to govern.—If the powers granted to a city manager by this chapter shall conflict with or shall be opposed to the powers or duties imposed upon or granted by law to the executive officer or governing body, the powers or duties imposed or granted by law to the executive officer or the governing body shall be deemed to be suspended for and during the period in which the city manager plan is in force in the city and during the employment of a city manager thereunder.

Source: S. L. 1919, ch. 80, § 4; 1925 Supp., § 3770b4; S. L. 1933, ch. 172, § 5; R. C. 1943, § 40-1007.

40-10-08. Election to determine question of retention of city manager plan—Procedure thereafter.—At any time after the city manager plan has been in force in any city for a period of five years or more, the governing body of the city may submit at any regular election the ques-

tion of whether or not such plan shall be retained. If a petition signed by forty percent or more of the qualified electors of the city as shown by the votes cast for the executive officer at the preceding city election, requesting the submission of such question is filed with the city auditor, the governing body shall submit such proposal to the voters of the city at an election to be held within ninety days after the filing of such petition. The signatures to such petition need not be appended to a single paper, but each single paper so used shall clearly state the purpose of the petition at the top of the paper, and each signature shall have been placed thereon not more than ninety days prior to the date on which the petition is filed in the office of the city auditor. Upon each paper one of the signers to such petition shall, under oath before an officer competent to administer oaths, swear that he witnessed the signing of each signature appearing on such paper and that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be. Each petition, in addition to the names of the signers, shall contain the name of the street and the number of the house in which each petitioner resides, the length of his residence in the state of North Dakota, the length of his residence in the city, and the date on which the petitioner signed the petition. Any petitioner shall be permitted to withdraw his name from a petition at any time prior to action by the governing body calling the election as provided herein. Such question shall not be submitted more than once in every five years. If a majority of the votes cast at the election shall be against retaining the city manager plan, the city shall revert to the plan in force previous to the adoption of the city manager plan, and the provisions of this chapter shall not be applicable to such city except after another compliance with its terms. The governing body shall fix the date, not less than three months nor more than six months after an election at which the majority vote is against the retention of the city manager plan, when such plan shall cease to be operative in the municipality.

Source: S. L. 1919, ch. 80, § 5; 1925 R. C. 1943, § 40-1008; S. L. 1959, ch. 304, Supp., § 3770b5; S. L. 1933, ch. 172, § 6: § 1.

NORTH DAKOTA CONSTITUTION

ARTICLE VI—MUNICIPAL CORPORATIONS

Section 130. Except in the case of home rule cities and villages as provided in this section the legislative assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money, and contracting debts. Money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

The legislative assembly shall provide by law for the establishment of home rule in cities and villages. It may authorize such cities and villages to exercise all or a portion of any power or function which the legislative assembly has power to devolve upon a nonhome rule city or village, not denied to such city or village by its own home rule charter and which is not denied to all home rule cities and villages by statute. The legislative assembly shall not be restricted in granting of home rule powers to home rule cities and villages by section 183 of this constitution.

Amendment: Art. 84, S. L. 1965, ch. 480, approved November 8, 1966, S. L. 1967, ch. 510, § 1.

Scope of Powers.

This section directs the legislative assembly to provide by the general law for the organization of municipal corporations. When created pursuant to statute they become agencies of the state and have only the powers expressly conferred upon them by the legislature or such as necessarily may be implied from the powers expressly granted, *Murphy v. City of Bismarck*, 109 NW 2d 635, 642.

Through the device of municipal cor-

porations, a portion of the legislative power of the state is delegated to local authorities. *Murphy v. City of Bismarck*, 109 NW 2d 635, 642.

Separation of Powers.

Sections 40-51.1-11 and 40-51.1-12, providing for district court determination of municipal annexation petitions, constituted an unconstitutional delegation of legislative power and violated the separation of powers principle; chapter 40-51.1 was unconstitutional in its entirety since the objectionable sections were integral parts of it. *City of Carrington v. Foster County*, 166 NW 2d 377.

CHAPTER 40-05

POWERS OF MUNICIPALITIES *

Section		Section	
40-05-01	Powers of all municipalities.	40-05-02	Additional powers of city council and board of city commissioners.
40-05-01.1	Assessment of costs of work done necessary for the general welfare.	40-05-02.1	Parking privileges for handicapped—Repealed.
40-05-01.2	Remedies additional and not restrictive—Repealed.		
Section		Section	
40-05-02.2	City may levy excise tax on nonprofit liquor dealers by ordinance.	40-05-09.1	Tax levy for fire department stations.
40-05-03	Cities having population of fifteen thousand may provide for regulation and inspection of food markets.	40-05-10	Municipalities to have powers of townships
40-05-04	Powers of village—Repealed.	40-05-11	Foreign city—Power to acquire by right of eminent domain, purchase, lease, own, and hold real estate in this state—Liability.
40-05-05	Cities may contract for electrical energy or gas.	40-05-12	Foreign city — Power to sue and defend in courts of this state.
40-05-06	City fines and penalties limited.	40-05-13	Foreign city — Power to convey realty — Regulations governing.
40-05-07	Village fines and penalties limited — Remission—Repealed.	40-05-14	Agreements for construction and maintenance of streets between municipalities and counties.
40-05-08	Municipal licenses for sale of agricultural products limited—Exception.	40-05-15	Unclaimed motor vehicles—When sale permitted—Bill of sale evidence of title.
40-05-09	Purchase of fire-fighting equipment — How paid — Limitations.		

*Only §§ 40-05-02; 40-05-03, 40-05-10, 40-05-11, 40-05-12, 40-05-13, 40-05-14 are reproduced

40-05-02. Additional powers of city council and board of city commissioners.—The city council in a city operating under the council form of government and the board of city commissioners in a city operating under the commission system of government, in addition to the powers possessed by all municipalities, shall have power:

1. Street railway and railway tracks. To permit, regulate, or prohibit the locating, constructing, or laying of railway or street railway tracks in any street, alley, or public place, and any permission given to a street railway shall not be for a longer period than fifty years;
2. License sale of milk. To license the sale of milk;
3. Lumber, wood, coal, hay, and merchandise—Municipal scales. To regulate the inspecting, weighing, and measuring of lumber, firewood, coal, hay, and other articles of merchandise, to establish or purchase one or more city scales and to require dealers in hay, coal, firewood, or any other commodity, which, in the judgment of the governing body, should be weighed upon the city scales, to use such scales in the sale of such commodity, and to charge a reasonable fee for the use of such scales;
4. Fences and party walls. To regulate partition fences and party walls;
5. Jail, house of correction, workhouse. To establish, maintain and regulate a city jail, house of correction, and workhouse for the confinement and reformation of disorderly persons convicted of violating any city ordinance, and to appoint necessary jailers and keepers;
6. Building permits. To provide by ordinance for the issuance of building permits and to fix the fees therefor;
7. Building construction—Fire escapes. To prescribe the manner of constructing buildings, structures, and the walls thereof; to require and regulate the construction of fire escapes on buildings; and to provide for the inspection of all buildings within the limits of the municipality and for the appointment of a building inspector;
8. Bridges, viaducts, tunnels, overhead pedestrian bridges. To construct and keep in repair bridges, viaducts, overhead pedestrian bridges, and tunnels, and to regulate the use thereof;
9. Police. To regulate the police of the municipality and to pass and enforce all necessary police ordinances;
10. Hospitals and medical dispensaries. To establish, control, and regulate hospitals and medical dispensaries;
11. Census. To provide for the taking of a census of the city, but no city census shall be taken more often than once in every three years;
12. Redistricting city. To redistrict the city into wards and to prescribe the boundaries thereof;
13. Zoning. To adopt a zoning ordinance as provided in this title; to regulate the location of junk shops, coalyards, garages, machine shops, power laundries, hospitals, and undertaking establishments; and to establish building lines fixing the distance from the property line at which buildings may be erected;
14. Traffic regulation. To regulate, control, or restrict within designated zones, or congested traffic districts, except that the speed limit for vehicles on those streets designated as part of any state highway shall be as determined by mutual agreement with the state highway commissioner, the use of streets, alleys, or other public ways by various classes of traffic, except that any municipal regulations shall be ineffective as to common carriers

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licensed by this state under a certificate of public convenience and necessity until such regulations are approved by the public service commission;

15. Driving while intoxicated. To prohibit by ordinance the operation of any motor vehicle or other conveyance upon the streets, alleys, or other public ways of the city by any person under the influence of intoxicating liquor or narcotics;
16. Tourist camps. To license, regulate, and fix the location of any public or private tourist camp within the city;
17. Water supply. To withdraw from any stream, watercourse, or body of water within or without a city, or within or without, or bordering upon, this state, a supply of water reasonably sufficient for the needs of the inhabitants of the city, and to supply the facilities for the storage of water for all other necessary municipal purposes;
18. Dams for municipal water purposes. To erect dams upon or across streams, watercourses, or bodies of water within or without, or bordering upon, the boundaries of this state, and to improve, alter, or protect the bed, banks, or course thereof;
19. Water supply—Acquire necessary property. To acquire by gift, grant, lease, easement, purchase, or by eminent domain, and to own, operate, maintain, and improve, all lands, structures, power plants, public works, and personal property, whether within or without this state, necessary for the maintenance and conservation of its water supply;
20. Abandoned or unclaimed personal property. To provide by ordinance for the taking, storage, and disposal of any personal property abandoned or left unclaimed upon the streets, alleys, or other public ways of the city for a period exceeding ten days, and, after holding such property for a period of not less than sixty days, to sell the same at public sale after a notice published or posted at least ten days before the sale, and at such place, and in such manner as may be provided by ordinance. Upon the sale of the property, the city shall convey to the purchaser a merchantable title by a bill of sale. At any time within six months after the sale, the owner of the property, upon written application, shall be entitled to receive the proceeds of the sale from the city, less the necessary expense of taking, storing, and selling the property. The owner of the property may reclaim it at any time prior to the sale upon payment of the necessary expense of taking and storing;
21. Auditoriums and public buildings. To take charge of a fully completed auditorium or other property originally purchased or acquired for public use by public subscription, donation, sale of stock, or otherwise, where such auditorium or other property

has been abandoned or lost by the original owner or owners, their successors or assigns, and to operate, maintain, repair, and keep such property for public use. In the ownership, management, use, or operation thereof, the city shall be deemed to be exercising a governmental function;

22. Dogs. To license dogs, and to regulate or prohibit their running at large, and to authorize their destruction when at large contrary to any prohibition or regulation;
23. Sale of pistols. To regulate the sale of pistols as prescribed in title 62, Weapons;
24. Removal of substandard buildings or structures. The governing body of any city shall have the authority to provide by ordinance for the demolition, repair or removal of any building or structure located within the limits of such city or other territory under its jurisdiction, which creates a fire hazard, is dangerous to the safety of the occupants or persons frequenting such premises, or is permitted by the owner to remain in a dilapidated condition. Any such ordinance shall provide for written notice to the owner of a hearing by the governing body before final action is taken by such body. It shall also provide a reasonable time within which an appeal may be taken by the owner from any final order entered by such governing body to a court of competent jurisdiction. This subsection shall in no way limit or restrict any authority which is now or may hereafter be vested in the state fire marshal for the regulation or control of such buildings or structures.
25. Assault and battery. To prohibit by ordinance and prescribe the punishment for the commission of assault and battery within the jurisdiction of the city.
26. Petit larceny. To prohibit by ordinance and prescribe the punishment for the commission of petit larceny as defined by section 12-40-03 of the North Dakota Century Code within the jurisdiction of the city.
27. Peace bonds. To provide by ordinance for the issuance of peace bonds by the police magistrate in accordance with the procedure in chapter 29-02 of the North Dakota Century Code.
28. Public transportation. To provide by ordinance for the purchase, acquisition, or establishment, and operation of a public transportation system. In the alternative to provide for payments under a contract, approved by the governing body of the city, with a private contractor, for the provision and operation of a public transportation system within the city.

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Source: N.D.C.C.; S. L. 1969, ch. 368, § 1; 1971, ch. 388, § 1.

Source: Pol. C. 1877, ch. 24, § 22; S. L. 1887, ch. 73, art. 4, § 1; 1887, ch. 106, § 1; 1890, ch. 100, §§ 1, 2; R. C. 1895, §§ 2148, 2365; S. L. 1897, ch. 102, § 1; 1897, ch. 148, § 1; 1899, ch. 40, § 1; R. C. 1899, §§ 2148, 2365; S. L. 1905, ch. 62, § 47; 1905, ch. 186, § 1; R. C. 1905, §§ 2678, 2964; S. L. 1907, ch. 45, § 48; 1907, ch. 268, § 1; 1911, ch. 77, § 48; 1911, ch. 79, § 1; 1913, ch. 81, § 1; 1913, ch. 291, § 1; C. L. 1913, §§ 3599, 3818, 3861; S. L. 1933, ch. 175, § 1; R. C. 1943, § 40-0502; S. L. 1945, ch. 252, §§ 1, 2; 1957 Supp.,

§ 40-0502; S. L. 1959, ch. 285, § 5; 1967, ch. 324, § 1.

Cross-References.

Advertising purposes, power of city to levy tax for, see § 57-15-10.1.

Bridges, construction by board of county commissioners, see § 24-08-01.

Bridges issuance of bonds to meet construction expenses of, see § 24-08-07.

Highways, classification as to weight and load capacities, see § 39-12-01.

40-05-03. Cities having population of fifteen thousand may provide for regulation and inspection of food markets.—The governing body of any city having a population of fifteen thousand or more may enact ordinances providing for the regulation and inspection of food markets, stores, and other places where food intended for human consumption is sold at retail.

Source: S. L. 1941, ch. 201, § 1; R. C. 1943, § 40-0503; S. L. 1967, ch. 107, § 8.

40-05-10. Municipalities to have powers of townships.—In addition to the powers conferred by this title, each incorporated municipality shall have and shall exercise, within its limits and in the manner prescribed by law, the same powers as are conferred upon townships by the laws of this state.

Source: S. L. 1893, ch. 112, § 121, subs. 1; R. C. 1895, § 2676; R. C. 1899, § 2676; R. C. 1905, § 3216; C. L. 1913, § 4272; R. C. 1943, § 40-0510. Cross-Reference. Powers of townships, see ch. 58-03.

40-05-11. Foreign city—Power to acquire by right of eminent domain, purchase, lease, own, and hold real estate in this state—Liability.—Any city of another state situated within five miles of the boundary line of this state may purchase, lease, own, and hold real estate in this state for waterworks or sewerage purposes and may improve the land for municipal purposes in the same manner as a city situated in this state, and may lease, let or convey the land. Any city so situated is hereby empowered to acquire, by purchase, gift, devise, or condemnation.

40-05-12. Foreign city—Power to sue and defend in courts of this state.—Any city of another state authorized by section 40-05-11 to own, lease, occupy, or hold real estate in this state shall have the same right as a city of this state to sue by its corporate authorities and in its corporate name in the courts of this state for the protection of any rights acquired in real estate in this state and to defend actions in its corporate name relating to the ownership, use, or occupation of real estate acquired.

Source: S. L. 1917, ch. 77, § 2; 1925 Supp., § 3770a2; R. C. 1943, § 40-0512.

40-05-13. Foreign city—Power to convey realty—Regulations governing.—Any real estate in this state owned by a city situated in another state may be conveyed by a warranty or quitclaim deed executed by and on behalf of such city in its corporate name by its executive officer and city auditor. The deed, when so executed and when acknowledged by the executive officer and city auditor for and on behalf of the city, before an officer competent to take acknowledgments, shall be entitled to record.

Source: N.D.C.C.; S. L. 1973, ch. 80, § 11.

40-05-14. Agreements for construction and maintenance of streets between municipalities and counties.—The governing body of any municipality of ten thousand population or less and the boards of county commissioners of the several counties may enter into agreements for the construction and maintenance of streets within such municipalities by the boards of county commissioners. Said municipalities shall pay, on a reimbursable basis, such sums as are agreed upon.

Source: S. L. 1953, ch. 253, § 1; R. C. 1943, 1967 Supp., § 40-0514.

CHAPTER 40-05.1—HOME RULE IN CITIES

1973 SUPPLEMEN

Section	Section
40-05.1-01 Enabling clause.	40-05.1-06 Powers.
40-05.1-02 Methods of proposing home rule charter.	40-05.1-07 Amendment or repeal.
40-05.1-03 Charter commission—Membership—Preparation and submission of charter—Compensation and expenses — Publication or distribution.	40-05.1-08 Commission—Terms of office —Vacancies.
40-05.1-04 Submission of charter to electors.	40-05.1-09 Restriction on proposals to amend or repeal.
40-05.1-05 Ratification by majority vote —Supersession of existing charter and state laws in conflict therewith — Filing of copies of new charter.	40-05.1-10 Manner of calling and holding elections.
	40-05.1-11 Effect of amendment or repeal on salary or term of office.
	40-05.1-12 Former powers preserved.
	40-05.1-13 Vested property — Rights of action—Actions saved.

40-05.1-01. Enabling clause.—Any city with a population of one hundred or more persons as determined by the last federal census and desiring to avail itself of the provisions of this chapter may proceed to frame, adopt, amend, or repeal home rule charters as herein provided in this chapter.

Source: S. L. 1969, ch. 371, § 1.

40-05.1-02. Methods of proposing home rule charter.—The governing body of any city may on its own motion cause a home rule charter to be framed and submitted for adoption to the electors of the city in the manner provided in this chapter, or such proposal may be made in a petition filed with the governing body and signed by not less than fifteen percent of the qualified electors of the city voting in the last city election.

Source: S. L. 1969, ch. 371, § 2.

40-05.1-03. Charter commission—Membership—Preparation and submission of charter—Compensation and expenses—Publication or distribution.—Where proceedings have been initiated for a home rule charter, the governing body of the city shall appoint a charter commission composed of five members to frame such charter. The chairman of the charter commission shall be designated by the governing body and shall be a charter commission member. Compensation and expenses of commission members shall be as determined by the governing body. The governing body may furnish the charter commission with office space, clerical help, legal and other assistance, and supplies, and may appropriate and pay for same out of its general funds. The commission shall prepare and submit the charter within one year after appointment. The proposed charter shall then be published once in a newspaper in the city where the charter is to be considered, or, if there is no newspaper published in the city then in the official county newspaper of the county in which the city is located. However, cities with a population of one thousand or less may, in lieu of publishing the charter in a newspaper, distribute copies of the charter door-to-door and have them posted and available at prominent locations in the city. In the event a city does not publish the charter in a newspaper, it must still publish a notice of the election.

Source: S. L. 1969, ch. 371, § 3; 1973, ch. 322, § 1.

40-05.1-04. Submission of charter to electors.—Not earlier than sixty days nor later than six months after such publication or distribution, the proposed charter shall be submitted to a vote of the qualified electors of the city at a regular or special city election, or at any primary or general election that is to be held within such period of time, or at a special city election held concurrent with any primary or general election.

Source: S. L. 1969, ch. 371, § 4; 1973, ch. 322, § 2.

40-05.1-05. Ratification by majority vote—Supersession of existing charter and state laws in conflict therewith—Filing of copies of new charter.—If a majority of the qualified voters voting on the charter at the election shall vote in favor of the home rule charter it shall be deemed to be ratified and shall become the organic law of such city, and extend to all its local and city matters. Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict therewith, and shall be liberally construed for such purposes. One copy of the charter so ratified and approved shall be filed with the secretary of state, one with the clerk of district court for the county in which the city is located, and one with the auditor of the city to remain as a part of its permanent records. Thereupon the courts shall take judicial notice of the new charter.

Source: S. L. 1969, ch. 371, § 5.

Superseding Legislation.

Home rule city's ordinance authorizing creation of pedestrian mall superseded contradictions in state legislation. *City of Fargo v. Fahriander*, 199 NW 2d 30.

40-05.1-06. Powers.—From and after the filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this chapter, such city, and the citizens thereof, shall, if included in the charter and implemented through ordinances, have the following powers set out in this chapter:

1. To acquire, hold, operate, and dispose of property within or without the corporate limits, and exercise the right of eminent domain for such purposes.
2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings and improvements; to contract debts, borrow money, issue bonds, warrants and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments.
3. To fix the fees, number, terms, conditions, duration, and manner of issuing and revoking licenses in the exercise of its governmental police powers.
4. To provide for city officers, agencies, and employees, their selection, terms, powers, duties, qualifications, and compensation.
5. To provide for city courts, their jurisdiction and powers over ordinance violations, duties, administration, and the selection, qualifications, and compensation of their officers; however, the

- right of appeal from judgment of such courts shall not be in any way affected.
6. To provide for all matters pertaining to city elections, except as to qualifications of electors.
 7. To provide for the adoption, amendment, and repeal of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof.
 8. To lay out or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation thereof.
 9. To define offenses against private persons and property and the public health, safety, morals, and welfare, and provide penalties for violations thereof.
 10. To engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute or to grant and regulate franchises therefor to a private person, firm, or corporation.
 11. To provide for zoning, planning, and subdivision of public or private property within the city limits; to provide for such zoning, planning, and subdivision of public or private property outside the city limits as may be permitted by state law.
 12. To levy and collect franchise and license taxes for revenue purposes.
 13. To exercise in the conduct of its affairs all powers usually exercised by a corporation.
 14. To fix the boundary limits of said city and the annexation and deannexation of territory adjacent to said city except that such power shall be subject to, and shall conform with the state law made and provided.
 15. To contract with and receive grants from any other governmental entity or agency, with respect to any local, state or federal program, project or works.

It is the intention of this chapter to grant and confirm to the people of all cities coming within its provisions the full right of self-government in both local and city matters within the powers enumerated herein. The statutes of the state of North Dakota, so far as applicable, shall continue to apply to home rule cities, except in so far as superseded by the charters of such cities or by ordinance passed pursuant to such charters.

Source: S. L. 1969, ch. 371, § 6.

40-05.1-07. Amendment or repeal.—The home rule charter adopted by any city may be amended or repealed by proposals submitted to and ratified by the qualified electors of the city in the same general manner provided in section 40-05.1-02 and section 40-05.1-04 for the adoption of such charter. Amendments may be proposed by the governing body

of the city or by petition of the number of electors provided in section 40-05.1-02 and submitted to the voters at the same election. The voters may at their option accept or reject any or all of such amendments by a majority vote of electors voting at the election. A proposal to repeal a home rule charter that has been adopted shall likewise be submitted to the electors of the city as set forth in this section.

Source: S. L. 1969, ch. 371, § 7.

40-05.1-08. Commission—Terms of office—Vacancies.—The terms of office of the members of the charter commission shall be four years. Any vacancy on said commission shall be filled by the governing body of the city.

Source: S. L. 1969, ch. 371, § 8.

40-05.1-09. Restriction on proposals to amend or repeal.—Any proposal to amend or repeal home rule charters shall not be submitted to the electorate more often than every two years.

Source: S. L. 1969, ch. 371, § 9.

40-05.1-10. Manner of calling and holding elections.—The elections provided for in this chapter shall be called and held in the same manner as is provided for the calling and holding of city elections except that all qualified voters of the city shall be eligible to vote at such elections and the form of ballot shall be prescribed by the charter commission so that the voter may signify whether he is for or against the proposed home rule charter or the amendment or repeal, as the case may be.

Source: S. L. 1969, ch. 371, § 10.

40-05.1-11. Effect of amendment or repeal on salary or term of office.—Repeal of a home rule charter shall cause the city affected by such repeal to revert to the form of government of such city immediately preceding adoption of the home rule charter and where positions to which officials were elected under the home rule charter are substantially the same as positions under the form of government to which the city reverts upon repeal, such elected officials shall continue to exercise the authority of such position for the salary prescribed by the home rule charter until expiration of their terms of office as prescribed by the home rule charter. No amendment of a home rule charter shall shorten the term for which any official was elected or reduce the salary of his office for that term.

Source: S. L. 1969, ch. 371, § 11.

40-05.1-12. Former powers preserved.—All powers heretofore granted any city by general law are hereby preserved to each home rule city, respectively, and the powers so conferred upon said cities by general law, are hereby granted to home rule cities.

Source: S. L. 1969, ch. 371, § 12.

40-05.1-13. Vested property—Rights of action—Actions saved.—The adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, rights of action, claims, and demands of any nature or kind whatever vested in the city under and by virtue of any charter theretofore existing or otherwise accruing to the city, but all such rights of action, claims, or demands shall vest in and inure to the city and to any persons asserting any such claims against the city as fully and completely as though the said charter or amendment had not been adopted hereunder. The adoption of any charter or amendment hereunder shall never be construed to affect the right of the city to collect by special assessment any special assessment theretofore levied under any law or charter for the purpose of public improvements, nor affect any right of any contract or obligation existing between the city and any person, firm, or corporation for the making of any such improvements and for the purpose of collecting any such special assessments and carrying out of any such contract.

Source: S. L. 1969, ch. 371, § 13.

CHAPTER 40-44

CIVIL SERVICE IN CITIES *

Section		Section	
40-44-01	Cities of certain population may adopt civil service system.	40-44-08	Ordinance creating civil service system—What to be included—Departments automatically included.
40-44-02	Failure or refusal of city to adopt civil service—Petition—Election held.	40-44-09	Ordinance providing for civil service shall prohibit political activities of persons under system.
40-44-03	Form of ballot to be used in voting upon adoption of civil service system — Vote required to adopt.	40-44-10	Contracting with other municipalities and state departments for conduct of competitive examinations.
40-44-04	Civil service commission or commissioner — Delegation of powers to — When rules and regulations effective.	40-44-11	Change of form of government in city which has adopted a civil service system—Effect.
40-44-05	Terms of members of commission or of commissioner — Clerk—Vacancies.	40-44-12	Abandonment of civil service system—Election—Form of ballot—Removal of department or employee from civil service.
40-44-06	Compensation and expenses of members of commission or of commissioner.	40-44-13	Penalty for violation of chapter.
40-44-07	Purpose and intent of chapter — Types of systems that may be set up.		

40-44-01. Cities of certain population may adopt civil service system. —The governing body of any city having a population of more than four thousand inhabitants according to the latest official federal or state census may adopt, by ordinance, a civil service system for the selection, employment, classification, advancement, suspension, retirement, or discharge of appointive officials or employees of the city.

Source: S. L. 1937, ch. 173, § 1; R. C. 1943, § 40-44-01.

Cross-Reference.

Park districts may adopt civil service system, sec § 40-49-20.

Collateral References.

Municipal Corporations—125, 133, 216 (1, 2).

See generally 15 Am. Jur. 2d, Civil Service, §§ 6-19.
62 C. J. S. Municipal Corporations, §§ 469, 711.

Abolition of office, effect of civil service laws to prevent, 4 ALR 207; 172 ALR 369.

Re-employment or reinstatement of public employee as restoration of orig-

*Only §§ 40-44-01 and 40-44-11 are reproduced

40-44-11. Change of form of government in city which has adopted a civil service system—Effect.—If any city in this state which has established a civil service system in compliance with the requirements of this chapter shall change its form of municipal government, such civil service provisions as previously have been established shall continue under the new form of municipal government except as to those provisions which the governing body of the city may see fit to change within the limitations described in this chapter. The governing body of the city, after the change in its form of government, shall designate, as described in section 40-44-08, the departments, classes of employees, and appointive officials of the city who shall come under the civil service, and it subsequently may add thereto except as restricted by the provisions of this chapter.

Source: S. L. 1939, ch. 174, § 1; R. C. 1943, § 40-4411.

CHAPTER 40-51.2—ANNEXATION AND EXCLUSION OF TERRITORY

Section	Short title.	Section	Annexation by petition of owners and electors.
40-51.2-01	Declaration of purpose.	40-51.2-03	Annexation by petition of owners and electors.
Section		Section	
40-51.2-04	Exclusion by petition of owners and electors.	40-51.2-11	Notice required.
40-51.2-05	Notice—Petition of owners and electors.	40-51.2-12	Annexation review commission—Hearing.
40-51.2-06	Petition of owners and electors — Annexation or exclusion — Classification of annexed agricultural lands for tax purposes.	40-51.2-13	Decision.
40-51.2-07	Annexation by resolution of municipal corporation.	40-51.2-14	Powers of the commission—Decision—Terms.
40-51.2-08	Annexation by petition of municipal corporation.	40-51.2-15	Review of determination of commission by certiorari.
40-51.2-09	Annexation review commission to be constituted — Hearing set.	40-51.2-16	Effective date of annexation by annexation review commission — Classification of annexed agricultural lands for tax purposes.
40-51.2-10	Annexation review commission — Composition.	40-51.2-17	Cost of annexation.
		40-51.2-18	Relation of this chapter to other laws.
		40-51.2-19	Savings clause.

40-51.2-01. Short title.—This chapter may be cited as "The Municipal Annexation Act of 1969".

Source: S. L. 1969, ch. 381, § 1.

40-51.2-02. Declaration of purpose.—It is hereby declared that the policies and procedures contained in this chapter are necessary and desirable for the orderly growth of urban communities in the state of North Dakota. It is the purpose of this chapter:

1. To encourage natural and well-ordered development of municipalities of the state;
 2. To extend municipal government to areas which form a part of the whole community;
 3. To simplify government structure in urban areas;
 4. To recognize the interrelationship and interdependence between a municipal corporation and areas contiguous or adjacent thereto;
- and to these ends this chapter shall be liberally construed. For the purposes of this chapter contiguity will not be affected by the existence of a platted street or alley, a public or private right of way, or a public or private transportation right of way or area, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land to be annexed.

Source: S. L. 1969, ch. 381, § 2.

40-51.2-03. Annexation by petition of owners and electors.—Upon a written petition signed by not less than three-fourths of the qualified electors or by the owners of not less than three-fourths in assessed value of the property in any territory contiguous or adjacent to any incorporated municipality and not embraced within the limits thereof, the governing body of the municipality, by ordinance, may annex such territory to the municipality.

Source: S. L. 1969, ch. 381, § 3.

40-51.2-04. Exclusion by petition of owners and electors.—Upon a petition signed by not less than three-fourths of the qualified electors and by the owners of not less than three-fourths in assessed value of the property in any territory within the limits of an incorporated municipality and contiguous or adjacent to such limits, the governing body of the municipality, by ordinance, may in its discretion, disconnect and exclude such territory from the municipality. The provisions of this section, however, shall apply only to lands which have not been platted under the provisions of either chapter 40-50 or section 57-02-39, and where no municipal improvements have been made or constructed therein or adjacent thereto. Further, in the event any property for which exclusion is petitioned has been within the limits of an incorporated municipality for more than ten years prior thereto and, as of the time of filing the petition, is not platted and has no municipal improvements thereon, the governing body of the municipality shall disconnect and exclude such territory by ordinance from the municipality.

Source: S. L. 1969, ch. 381, § 4; 1971, ch. 419, § 1.

40-51.2-05. Notice—Petition of owners and electors.—The governing body shall not take final action on a petition presented by owners and electors until the petitioners have given notice of presentation of their petition by one publication in the official newspaper of the municipality, and if none, in the official newspaper of the county.

Source: S. L. 1969, ch. 381, § 5.

40-51.2-06. Petition of owners and electors—Annexation or exclusion—Classification of annexed agricultural lands for tax purposes.—If the governing body determines to annex said area it shall do so by ordinance, a copy of which with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded with the county register of deeds, whereupon annexation shall then be effective. Annexation shall be effective for the purpose of general taxation on and after the first day of April next ensuing; provided, however, the municipal corporation shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use. If the governing body determines to exclude the area petitioned for, it may do so by ordinance adopted and recorded as in case of annexation.

Source: S. L. 1969, ch. 381, § 6; 1971, ch. 420, § 1; 1973, ch. 337, § 1.

40-51.2-07. Annexation by resolution of municipal corporation.—The governing body of any municipality may adopt a resolution to annex contiguous or adjacent territory as follows:

1. The governing body of the municipality shall adopt a resolution describing the property to be annexed; and

2. Shall cause said resolution together with a notice of the time and place it will meet to hear and determine the sufficiency of any written protests against such proposed annexation to be published in the official newspaper once each week for two consecutive weeks. The owners of any real property within the territory proposed to be annexed within thirty days of the first publication of such resolution may file written protests with the city auditor protesting against the proposed annexation. No state-owned property shall be annexed without the written consent of the state agency or department having control thereof. The governing body of the municipality, at its next meeting after the expiration of the time for filing such protests, shall hear and determine the sufficiency thereof; and
3. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution shall be included within and shall become a part of the city, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded with the county register of deeds, whereupon annexation shall become effective. Annexation shall be effective for the purpose of general taxation on and after the first day of April next ensuing; provided, however, the municipal corporation shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use.

If the owners of one-fourth or more of the territory proposed to be annexed protest, the city may seek annexation by petition to the annexation review commission as hereinafter provided.

Source: S. L. 1969, ch. 381, § 7; 1971, ch. 420, § 2; 1971, ch. 421, § 1; 1973, ch. 337, § 2.

40-51.2-08. Annexation by petition of municipal corporation.—The governing body of any municipal corporation may petition the attorney general for annexation of any territory contiguous or adjacent to it. The petition shall set forth an accurate map of the area sought to be annexed, its description, and the reasons for its annexation.

Source: S. L. 1969, ch. 381, § 8.

40-51.2-09. Annexation review commission to be constituted—Hearing set.—Upon receipt of such petition the attorney general shall issue an order to constitute an annexation review commission to hear such petition and he shall designate a time and place at which the commission shall meet to consider the petition. The time of such hearing shall be not less than thirty days after receipt of such petition.

Source: S. L. 1969, ch. 381, § 9.

40-51.2-10. Annexation review commission—Composition.—The annexation review commission shall be composed of the attorney general, one county member and one city member. The board of county commissioners shall appoint one member of the board of supervisors, selected by said board of supervisors, from the township in which the territory sought to be annexed is situated as the county member on such annexation review commission and in the event such territory is not situated in an organized township then the board of county commissioners shall appoint one of its members who resides outside the corporate boundaries of the annexing municipality as the county member on such commission and the governing body of the municipality instituting the annexation proceedings shall appoint one of its members as the city member on such commission. The attorney general shall be chairman of such commission, and he may designate one of his assistant attorneys general to serve and act in his stead on such commission.

Source: S. L. 1969, ch. 381, § 10.

40-51.2-11. Notice required.—At the time he sets the time and place of hearing, the chairman of such commission shall direct the annexing municipality to cause a notice of such hearing and a copy of its petition to be published at least once a week for two successive weeks in the official newspaper of such municipal corporation, and to serve a copy of such notice and petition upon the chairman of the governing body of the county and township, if organized, wherein the territory to be annexed lies. Such hearing shall be held not less than thirty days after the first publication of such notice. Proof of publication and service of the notice and petition as required herein shall be filed with the chairman of such commission prior to the time of such hearing.

Source: S. L. 1969, ch. 381, § 11.

40-51.2-12. Annexation review commission—Hearing.—At the time of the hearing the commission shall hear all evidence with respect to such annexation and it shall consider all studies, surveys, maps, data, reports and other material prepared by any state or local governmental subdivision, planning or zoning commission in the performance of their functions. Any resident of or person owning property or having any interest in the area proposed to be annexed and any elector of the annexing municipality or his representatives may appear at such hearing and present evidence upon any matter to be determined by the commission. All proceedings at the hearing and any continuances thereof shall be recorded but the same need not be transcribed unless proceedings for judicial review are initiated as provided in section 40-51.2-15.

Source: S. L. 1969, ch. 381, § 12.

40-51.2-13. Decision.—Upon the completion of the hearing, the commission shall determine if the annexation should be granted after considering and finding that from the evidence one or more of the following factors are present with respect to the proposed annexation which

will constitute a more harmonious and compatible metropolitan community:

1. The present and future uses or development of the area sought to be annexed.
2. Whether a community of interest exists between the area sought to be annexed and the annexing municipality.
3. The educational, recreational, civic, social, religious, industrial, commercial, or municipal facilities and services made available by or in the annexing municipality to any resident, business, industry or employee of such business or industry located in the area sought to be annexed.
4. Whether any governmental services or facilities of the annexing municipality are or can be made available to the area sought to be annexed.
5. The economic, physical and social relationship of the inhabitants, businesses, or industries of the area sought to be annexed to the annexing municipal corporation, and to the school districts and other political subdivisions affected thereby.

If a majority of the commission are satisfied that the annexation should be granted, it shall determine the terms and conditions upon which annexation is to be had and shall enter an order granting the petition. In all cases, the commission shall set forth in writing its findings of fact, its conclusions based thereon and its decision, and shall mail a copy thereof to all parties to the annexation proceedings.

The order granting the petition shall set forth in detail all such terms and conditions upon which the petition is granted and the effective date thereof. Such order together with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded in the office of the register of deeds of the county wherein the annexed territory is situated.

Source: S. L. 1969, ch. 381 § 13.

40-51.2-14. Powers of the commission—Decision—Terms.—The commission in making its decision, shall balance the equities presented by the evidence and shall enter an order setting forth what it deems to be fair and reasonable terms and conditions and shall direct the annexation in conformity therewith. It shall have power:

1. To approve or disapprove, with or without amendment, wholly, partially, or conditionally the petition for annexation.
2. To determine the metes and bounds of the territory to be annexed and may include the same area or a smaller area than that described in the petition.
3. To require payment by the municipal corporation of a sum determined by the commission payable to compensate for the value of

public improvements acquired by the annexation proceedings and to require the assumption by the municipal corporation of a prorata share of any existing bonded indebtedness of any township from which territory is annexed.

Source: S. L. 1969, ch. 381, § 14.

40-51.2-15. Review of determination of commission by certiorari.—Within thirty days after receipt of the commission's order, any interested party dissatisfied with the decision made by the annexation review commission may make an application to the district court for a writ of certiorari. The review upon such writ shall extend only to the determination of whether such commission has pursued its authority regularly and has not exceeded its jurisdiction or abused its discretion under the provisions of this chapter.

Source: S. L. 1969, ch. 381, § 15.

40-51.2-16. Effective date of annexation by annexation review commission.—Classification of annexed agricultural lands for tax purposes.—Territory annexed to a municipality under the provisions of this chapter relating to petition to annexation review commission shall be annexed as of the date of the order of the commission, except for tax purposes, and a copy of the resolution with an accurate map of the annexed area, certified by the executive officer of the municipality, shall be filed and recorded with the county register of deeds. Annexation shall be effective for the purpose of general taxation on and after the first day of April next ensuing; provided, however, the municipal corporation shall continue to classify as agricultural lands for tax purposes all lands in the annexed area which were classified as agricultural lands immediately prior to such annexation proceedings until such lands are put to another use.

Source: S. L. 1969, ch. 381, § 16; 1971, ch. 420, § 3; 1973, ch. 337, § 3.

40-51.2-17. Cost of annexation.—The costs of annexation proceedings shall be paid by the municipal corporation instituting the proceeding and shall be the same as those allowed in any civil action.

Source: S. L. 1969, ch. 381, § 17.

40-51.2-18. Relation of this chapter to other laws.—The powers conferred and the limitations imposed by this chapter shall be in addition and supplemental to, and not in substitution for, powers conferred by any other law.

Source: S. L. 1969, ch. 381, § 19.

40-51.2-19. Savings clause.—If any section, subsection, subdivision, sentence, or clause of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the chapter.

Source: S. L. 1969, ch. 381, § 20.

CHAPTER 48-04—JOINT OWNERSHIP

Section		Section	
48-04-01	Joint ownership and use of public buildings and grounds — Townships — Cities — Special elections.	48-04-02	Joint custody and control of public buildings and grounds.
		48-04-03	Incurring indebtedness for payment of public buildings and grounds.

48-04-01. Joint ownership and use of public buildings and grounds—Townships—Cities—Special elections.—Any civil township and incorporated city located within the boundaries thereof, when authorized by three-fourths of the legal voters of each municipality present and voting at separate elections, may acquire and use jointly any public buildings and grounds within the corporate limits of either one. The question of such joint acquisition and use may be submitted at regular or legally called special elections of both municipalities held not more than three months apart and when once submitted may not again be submitted within one year.

Source: N.D.C.C.; S. L. 1967, ch. 323,
§ 230.

48-04-02. Joint custody and control of public buildings and grounds.—Such public buildings and grounds as are provided for in section 48-04-01, shall be in the joint custody and control of the governing boards of such city and township, which shall make and enforce lawful and reasonable regulations for the care, protection, and use thereof.

Source: N.D.C.C.; S. L. 1967, ch. 323,
§ 231.

48-04-03. Incurring indebtedness for payment of public buildings and grounds.—Townships or cities may incur indebtedness, and may provide for the payment thereof severally, but not jointly, for the acquisition of any such public buildings and grounds in the manner provided by chapter 21-03 of the title Governmental Finance.

Source: N.D.C.C.; S. L. 1967, ch. 323,
§ 232.

CHAPTER 54-40

JOINT EXERCISE OF GOVERNMENTAL POWERS

Section	Section
54-40-01 Agreement.	54-40-05 Agreement shall provide for distribution of property.
54-40-02 Agreement to state purpose.	54-40-06 Residence requirement.
54-40-03 Disbursement of funds.	54-40-07 Chapter not to affect other statutes.
54-40-04 Termination of agreement.	

54-40-01. Agreement.—Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or co-operatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing and maintaining any building for their joint use. The term "governmental unit" as used in this action includes and means every city, village, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.

Source: S. L. 1955, ch. 309, § 1; 1957, ch. 331, § 1; R. C. 1943, 1957 Supp., § 54-4001.

54-40-02. Agreement to state purpose.—Such agreement shall state the purpose of the agreement or the power or powers to be exercised, and it shall provide for the method by which the purpose sought shall be accomplished or the manner in which the power or powers shall be exercised.

Source: S. L. 1955, ch. 309, § 2; R. C. 1943, 1957 Supp., § 54-4002.

54-40-03. Disbursement of funds.—The parties to such agreement may provide for disbursements from public funds, including funds already raised to buy real estate for public buildings and other proper funds or properties already on hand, to carry out the purposes of the agreement. Funds may be paid to and disbursed by such agency as may be agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by the parties to the agreement. Strict accountability of all funds and report of all receipts and disbursements shall be provided for.

Source: S. L. 1955, ch. 309, § 3; R. C. 1943, 1957 Supp., § 54-4003.

54-40-04. Termination of agreement.—Such agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms.

Source: S. L. 1955, ch. 309, § 4; R. C. 1943, 1957 Supp., § 54-4004.

54-40-05. Agreement shall provide for distribution of property.—Such agreement shall provide for the disposition of any property acquired as the result of such joint or co-operative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting parties after the purpose of the agreement has been completed.

Source: S. L. 1955, ch. 309, § 5; R. C. 1943, 1957 Supp., § 54-4005.

54-40-06. Residence requirement.—Residence requirements for holding office in any governmental unit shall not apply to any officer appointed to carry out any such agreement.

Source: S. L. 1955, ch. 309, § 6; R. C. 1943, 1957 Supp., § 54-4006.

54-40-07. Chapter not to affect other statutes.—This chapter does not dispense with procedural requirements of any other statute providing for the joint or co-operative exercise of any governmental power.

Source: S. L. 1955, ch. 309, § 7; R. C. 1943, 1957 Supp., § 54-4007.

CHAPTER 54-40—JOINT EXERCISE OF GOVERNMENTAL POWERS

Section

54-40-08 Joint functions—Who may participate.

Section

54-40-09 Human service centers — Powers—Duties.

54-40-08. Joint functions—Who may participate.—Any municipality, county, park district, school district, or other political subdivision of this state upon approval of its respective governing body may enter into agreements with one another for joint or cooperative action, on a cost-sharing basis, or otherwise, to carry out any function or duty which may be authorized by law or assigned to one or more of them, and to expend funds of such municipality, county, park district, school district, or other political subdivision pursuant to such agreement, to use unexpended balances of their respective current funds, to enter into lease-option to buy and contract for deed agreements between themselves and with private parties, and to accumulate funds from year to year for the provision of services and facilities, and to otherwise share or contribute property in accordance with such agreement in jointly and cooperatively carrying out such function or duty.

Source: S. L. 1963, ch. 353, § 1; 1969, ch. 451, § 1; 1971, ch. 509, § 1.

54-40-09. Human service centers—Powers—Duties.—Human service centers organized under this chapter are those centers established to provide human services otherwise authorized by law by the state or any of its political subdivisions. The term "human service" means service provided to individuals or their families in need thereof to help them achieve, maintain, or support the highest level of personal independence and economic self-sufficiency, including health, mental health, education, manpower, social, vocational rehabilitation, aging, food and nutrition, and housing service. A human service center shall be established by the appointment of a board of directors of not less than eleven members by the authorized representatives of the agencies and political subdivisions for whom the services will be rendered by such center and by the passage of a motion by the governing bodies of such units setting forth its purposes and programs, and the approval of rules or bylaws under which operations shall be conducted, and the approval of the agreement stating the relationships between the center and parent agencies. Human service centers and their parent boards or agencies shall have such powers and duties as authorized in this chapter for political subdivisions of the state, unless otherwise provided in this section. Human service centers shall expend funds in accordance with law and legislative appropriations, and shall have access to the services of the state's combined automatic telecommunications system, and the department of accounts and purchases computer, duplicating, accounting, purchasing, and other services rendered by such department to state agencies and institutions. The state social service board, the state health department, and such other agencies of the state as

may have responsibilities in the field of service as provided by human service centers shall provide such centers assistance to the extent that the requests for such services are reasonable and related to the programs of such departments.

Source: S. L. 1973, ch. 428, § 1.

CHAPTER 11-33

COUNTY ZONING

Section		Section	
11-33-01	County power to regulate property.	11-33-04	County planning commissions authorized—Membership.
11-33-02	Board of county commissioners to designate districts.	11-33-05	Meetings—Officers.
11-33-03	Object of regulations.	11-33-06	Investigations.
Section		Section	
11-33-07	County planning commission to prepare plan.	11-33-16	Enforcement.
11-33-08	Hearings.	11-33-17	Violation of zoning regulations and restrictions—Remedies.
11-33-09	Publication of resolutions.	11-33-18	Board of county commissioners authorized to issue permits—Appropriate money.
11-33-10	Separate hearings.	11-33-19	Joint planning commission may be established.
11-33-11	May adjust enforcement.	11-33-20	Township zoning not affected—Township and municipalities may relinquish powers.
11-33-12	Appeals to district court.		
11-33-13	Not to affect use.		
11-33-14	Nonconforming uses regulated.		
11-33-15	Board of county commissioners to make complete list.		

11-33-01. County power to regulate property.—For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county is hereby empowered to regulate and restrict within the county, subject to the provisions of section 11-33-20, the location and the use of buildings and structures and the use, condition of use or occupancy of lands for residence, recreation, and other purposes.

Source: S. L. 1955, ch. 119, § 1; R. C. 1943, 1957 Supp., § 11-3301.

Cross-Reference.

Zoning of territory adjacent to cities, see § 11-34-01.

Gasoline Filling Station.

A proposed gasoline filling station did

not violate a county zoning district resolution prohibiting construction of structures which could be used for mass meetings or where people congregate in large numbers. *Savelkoul v. Board of County Comrs. of Ward County*, 96 NW 2d 394.

11-33-02. Board of county commissioners to designate districts.—For any or all of the purposes designated in section 11-33-01, the board of county commissioners may by resolution divide all or any parts of the county, subject to the provisions of section 11-33-20, into districts of such number, shape, and area as may be deemed necessary, and may likewise enact suitable regulations to carry out the purposes of this chapter. These regulations shall be uniform in each district, but the regulations in one district may differ from those in other districts. No regulation or restriction, however, shall prohibit or prevent the use of land or buildings for farming or any of the normal incidents of farming. The provisions of this chapter shall not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

Source: S. L. 1955, ch. 119, § 2; R. C. 1943, 1957 Supp., § 11-3302.

11-33-03. Object of regulations.—These regulations shall be made in accordance with a comprehensive plan and designed for any or all of the following purposes:

1. To protect and guide the development of nonurban areas;
2. To secure safety from fire, flood, and other dangers;
3. To regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes;
4. To lessen governmental expenditures;
5. To conserve and develop natural resources.

These regulations shall be made with a reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses.

Source: S. L. 1955, ch. 119, § 3; R. C. 1943, 1957 Supp., § 11-3303.

11-33-04. County planning commissions authorized—Membership.—The board of county commissioners of any county desiring to avail itself of the powers conferred by this chapter, shall establish, by resolution, a county planning commission to recommend the boundaries of the various county zoning districts and appropriate regulations and restrictions to be established therein. Membership of such commission shall be composed of nine members, two of whom shall be appointed from the board of county commissioners, and two from the governing body of the municipality designated as the county seat of the county to serve for their respective terms of elective office. The remaining five members shall be appointed from the county at large. When appointments to said commission are first made, three members-at-large shall be appointed for a two year term and two members-at-large for a four year term, after which all subsequent appointments for members-at-large shall be for a four year term. Appointments to fill vacancies shall be for the unexpired portion of the term. All appointments to the county planning commission shall be made by the board of county commissioners.

Source: S. L. 1955, ch. 119, § 4; R. C. 1943, 1957 Supp., § 11-3304.

11-33-05. Meetings—Officers.—The commission shall meet within thirty days after its appointment and elect a chairman and other necessary officers from its membership. The commission may adopt rules and bylaws not inconsistent with the provisions of this chapter. A majority of the members of the commission shall constitute a quorum. Members of the commission may be compensated for their actual expenses in the same manner as members of the board of county commissioners. The county auditor shall serve as secretary to the commission and shall keep all of the records and accounts of the commission.

Source: N.D.C.C.; S. L. 1969, ch. 138, § 1.

1973 SUPPLEMENT

11-33-06. Investigations.—The county planning commission in conjunction with the township boards of the affected areas shall investigate and determine the necessity of establishing districts and prescribing regulations therefor, as herein provided; and, for that purpose, shall consult with residents of affected areas, and with federal, state, and other agencies concerned. State, county, township, city, and village officials, departments, or agencies are hereby required to make available, upon request of the county planning commission, such pertinent information as they may possess, to render technical assistance, and to co-operate in assembling and compiling pertinent information.

Source: S. L. 1955, ch. 119, § 6; R. C. 1943, 1957 Supp., § 11-3306.

11-33-07. County planning commission to prepare plan.—After investigation, as herein provided, the county planning commission shall prepare a proposed resolution to be submitted to the board of county commissioners establishing districts and prescribing regulations therefor, as herein provided, which shall be filed in the office of the county auditor.

Source: S. L. 1955, ch. 119, § 7; R. C. 1943, 1957 Supp., § 11-3307.

11-33-08. Hearings.—After the filing of the proposed resolution, the county planning commission shall hold a public hearing thereon, at which the proposed resolution shall be submitted for discussion, and parties in interest and citizens shall have an opportunity to be heard. Notice of the time, place, and purpose of the hearing shall be published once each week for three consecutive weeks in the official newspaper of the county, and in such other newspapers published in the county as the county planning commission may deem necessary.

Source: S. L. 1955, ch. 119, § 8; R. C. Cross-Reference.
1943, 1957 Supp., § 11-3308.

Hearing on zoning proposal for territory adjacent to cities, see § 11-34-02.

11-33-09. Publication of resolutions.—Following the public hearing, the board of county commissioners may adopt the proposed resolutions, with such changes as it may deem advisable. Forthwith after the adoption of any such resolution, the county auditor shall cause the same to be published for three successive weeks in the official newspaper of the county and in such other newspapers published in the county as the board of county commissioners may deem necessary. Proof of such

11-33-17. Violation of zoning regulations and restrictions—Remedies.—If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this chapter, the proper county authorities, or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceedings:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
2. To restrain, correct, or abate such violations;
3. To prevent the occupancy of the building, structure, or land; or
4. To prevent any illegal act, conduct, business, or use in or about such premises.

Source: S. L. 1955, ch. 119, § 17; R. C. 1943, 1957 Supp., § 11-3317.

11-33-18. Board of county commissioners authorized to issue permits—Appropriate money.—The board of county commissioners is empowered to authorize and provide for the issuance of permits as a prerequisite to construction, erection, reconstruction, alteration, repair, or enlargement of any building or structure otherwise subject to the provisions of this chapter, and may establish and collect reasonable fees therefor. The fees so collected shall be credited to the general fund of the county. The board of county commissioners is further empowered to appropriate, out of the general funds of the county, such moneys as may be necessary for the purposes of this chapter.

Source: S. L. 1955, ch. 119, § 18; R. C. 1943, 1957 Supp., § 11-3318.

11-33-19. Joint planning commission may be established.—Where the area to be regulated and restricted is situated in two or more counties a joint planning commission may be established. Membership of such a joint planning commission shall consist of five members from each county planning commission to be appointed by the chairman of the respective county planning commissions. Each joint commission shall make a preliminary report and hold public hearings thereon as is provided in the case of county planning commissions before submitting its final report and recommendations to the respective county planning commissions of each county concerned.

Source: S. L. 1955, ch. 119, § 19; R. C. 1943, 1957 Supp., § 11-3319.

11-33-20. Township zoning not affected—Township and municipalities may relinquish powers.—The provisions of this chapter shall in no way prevent townships from making regulations as provided in sections 58-03-11 to 58-03-15, inclusive, but such townships may relinquish their power to enact zoning regulations to the county by resolution of the board of township supervisors. The provisions of this chapter shall not be construed to affect any property, real or personal, located within the limits of any incorporated municipality of this state, except that any such municipality by resolution of its governing body may relinquish to the county its power to enact zoning regulations under chapter 40-47, in which case such property shall be subject to the provisions of this chapter.

Source: S. L. 1955, ch. 119, § 20; R. C. 1943, 1957 Supp., § 11-3320.

11-33-21. General penalties for violation of zoning regulations and restrictions.—A violation of any provision of this chapter or the regulations and restrictions made thereunder shall constitute the maintenance of a public nuisance and upon conviction there shall be a penalty of a fine of not more than two hundred dollars or imprisonment in the county jail for not more than thirty days or by both such fine and imprisonment.

Source: S. L. 1973, ch. 103, § 1.

CHAPTER 58-03

POWERS OF TOWNSHIP AND OF ELECTORS OF THE TOWNSHIP

Section		Section	
58-03-01	Powers of township.	58-03-10	Township bylaws—Clerk must publish and record — On whom binding.
58-03-02	Powers of township limited.	58-03-11	Establishment of zoning districts—Limitation—Scope of zoning regulations and restrictions.
58-03-03	Acts of township to be in corporate name.	58-03-12	Basis for township zoning regulations and restrictions.
58-03-04	Townships provide for confinement of prisoners.	58-03-13	Township zoning commissions —Membership—Reports and recommendations — District boundaries — Hearings — Notice.
58-03-05	Notice to be given that township is providing jail.	58-03-14	Violation of zoning regulations and restrictions—Remedies.
58-03-06	Township charges and levies.	58-03-15	Appeals.
58-03-07	Powers of electors.		
58-03-08	Establishment of public library and reading room — Repealed.		
58-03-09	Township electors shall designate public places for posting notices.		

*Only §§ 58--
03-II through
58-03-15 are
reproduced

58-03-11. Establishment of zoning districts—Limitation—Scope of zoning regulations and restrictions.—For the purpose of promoting the health, safety, morals or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes. All such regulations and restrictions shall be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. No regulation or restriction, however, shall apply to or prevent the use of land or buildings for farming or any of the normal incidents of farming. The provisions of sections 58-03-11 through 58-03-15, shall not be construed to include any power relating to the establishment, repair and maintenance of highways or roads.

Source: S. L. 1953, ch. 340, § 1; R. C. 1943, 1957 Supp., § 58-0311; S. L. 1961, ch. 373, § 1.

Cross-References.

Airport zoning, see ch. 2-04.
City zoning, see ch. 40-47.
County zoning, see ch. 11-33.
Municipal planning commissions, see ch. 40-48.
Municipal zoning, see ch. 40-47.

Regional planning and zoning commissions, see §§ 11-35-01, 11-35-02.

Rural subdivision improvement, see §§ 11-33.1-01, 11-33.1-02.

Township zoning not affected by county zoning except by resolution of supervisors, see § 11-33-20.

Collateral References.

Zoning—13, 15, 31.
58 Am. Jur., Zoning, §§ 8, 32-42.
101 C. J. S. Zoning, §§ 6, 9, 11, 31.

58-03-12. Basis for township zoning regulations and restrictions.—The regulations and restrictions established in any township zoning district shall be made in accordance with a comprehensive plan with reasonable consideration as to the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and shall be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, and promote health, safety, and general welfare.

Source: S. L. 1953, ch. 340, § 2; R. C. 1943, 1957 Supp., § 58-0312.

58-03-13. Township zoning commissions—Membership—Reports and

of township supervisors of a township desiring to avail itself of the powers conferred by sections 58-03-11 through 58-03-15, shall establish, by resolution, a township zoning commission to recommend the boundaries of the various township zoning districts and appropriate regulations and restrictions to be established therein. Membership of such commission shall consist of three township supervisors and two members appointed from the municipalities concerned in relation to which such zoning is contemplated. Where the area to be regulated and restricted is situated in two or more townships, a joint zoning commission may be established. Membership of a joint zoning commission shall consist of two township supervisors from each township and two members from the municipality in relation to which such zoning is contemplated. Each such commission shall make a preliminary report and hold public hearings thereon before submitting its final report and recommendations to the board or boards of township supervisors. The board or boards of township supervisors may thereupon establish, and from time to time change, the boundaries of township zoning districts and establish, amend, supplement, and enforce regulations and restrictions in such districts. No regulation, restriction, or boundaries shall become effective until after a public hearing thereon at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in the official newspaper of the county and also in the official newspaper of the municipality in relation to which such zoning action is taken, if in such municipality an official newspaper other than the official newspaper of the county is published. The description of any land within any zoning district established by a zoning commission together with any regulations and restrictions established therein shall be filed with the governing bodies of the township and municipalities concerned, and in the event amendments are made to the boundaries of the zoning district or the regulations or restrictions established therein, such amendments shall be filed in the same manner.

Source: S. L. 1953, ch. 340, § 3; R. C. 1943, 1957 Supp., § 58-0313; S. L. 1961, ch. 373, § 2.

58-03-14. Violation of zoning regulations and restrictions—Remedies.—If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used, in violation of any regulation or restriction made under the authority conferred by sections 58-03-11 through 58-03-15, the proper local authorities of the township or of the municipality in relation to which such zoning regulation or restriction is established, or any affected citizen or property owner, in addition to other remedies, may institute any appropriate action or proceeding:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
2. To restrain, correct, or abate such violations;
3. To prevent the occupancy of the building, structure, or land; or
4. To prevent any illegal act, conduct, business, or use in or about such premises.

Source: S. L. 1953, ch. 340, § 4; R. C. 1943, 1957 Supp., § 58-0314.

Collateral References.

Zoning—761 et seq.
58 Am. Jur., Zoning, §§ 178-193.
101 C. J. S. Zoning, §§ 44, 390 et seq.

58-03-15. Appeals.—Appeals from any rule, regulation, restriction, or decision of the board of township supervisors may be made to the district court of the county in which such township lies. Upon a showing that any rule, regulation, restriction, or decision of the board of township supervisors is unreasonable under the circumstances or contrary to the intent of sections 58-03-11 through 58-03-15, any such regulation, restriction or decision may be set aside or reversed.

CHAPTER 40-47

CITY ZONING

Section		Section	
40-47-01	Cities may zone—Application of regulations.	40-47-08	Appeal to board of adjustment — Taking — Filing — Time — Transmitting record.
40-47-02	Division of city into districts to carry out regulations.	40-47-09	Hearing of appeal by board of adjustment—Notice—Authority of board — Items taken into consideration by board.
40-47-03	Regulation for zoning made for what purposes.	40-47-10	Effect of appeal to board of adjustment—Restraining order.
40-47-04	Determining and enforcing regulations—Public hearing and notice thereof.	40-47-11	Determination of board of adjustment reviewable by certiorari.
40-47-05	Amendments to or repeals of zoning regulations—Protest —Required vote for passage —Regulations governing.	40-47-12	Instituting action to restrain, correct, or abate violations.
40-47-06	Zoning commission—Appointment — Duties — Preliminary and final report.	40-47-13	Conflict between regulations adopted under this chapter and other laws, ordinances, or regulations.
40-47-07	Board of adjustment—Members — Term — Hear and decide appeals and review orders.		

40-47-01. Cities may zone—Application of regulations. — For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of

yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained.

Source: S. L. 1923, ch. 175, § 1; C. L. 1913, 1925 Supp., § 3756a1; S. L. 1929, ch. 181, § 1; R. C. 1943, § 40-4701; S. L. 1963, ch. 298, § 1; 1967, ch. 323, § 211.

Cross-References.

Hospital, permission to establish in residence block of city required, see § 23-12-04.

Municipal zoning not affected by county zoning except by resolution of governing body, see § 11-33-20.

Regional planning and zoning commissions, see ch. 11-35.

Constitutionality.

Statutory provision granting to cities the power to regulate the height and size of buildings did not deprive the owner of property without due process of law. *City of Bismarck v. Hughes*, 53 ND 838, 208 NW 711.

Amendment of Ordinance.

This statute does not authorize the building inspector or the board of adjustment to amend the ordinance, so as to authorize the erection of a building which is forbidden by the ordinance. *Livingston v. Peterson*, 59 ND 104, 228 NW 816.

Facing of Buildings.

This statute does not give the city authority to require the owners of lots to face buildings in any direction or upon any street. *Williams v. City of Fargo*, 63 ND 183, 247 NW 46.

Collateral References.

Municipal Corporations—601-601(29); Zoning—4-6.

58 Am. Jur., Zoning, § 8 et seq.

62 C. J. S. Municipal Corporations, §§ 226(1)-226(9); 101 C. J. S. Zoning, §§ 1-14.

Zoning: Creation of restricted residence districts from which business buildings or multiple residences are excluded, 19 ALR 1394; 33 ALR 287; 38

ALR 1496; 43 ALR 668; 54 ALR 1030; 86 ALR 669; 117 ALR 1123.

Initiative and referendum provisions, zoning ordinance as within operation of, 122 ALR 789.

Racial or religious differences, validity of provisions in respect of, in zoning ordinance or regulation which is not confined to that matter but embraces a broader zoning plan, 126 ALR 638.

Spot zoning, 128 ALR 740; 51 ALR 2d 263.

Accessory or incidental purposes, construction and application of provision of zoning ordinance permitting use for, 150 ALR 494.

Construction and application of provisions of zoning regulations respecting permissible use, where lot or parcel is divided by zone boundary lines, 159 ALR 854.

Validity of zoning law as affected by limitation of area zoning (partial or "piecemeal" zoning), 165 ALR 823.

Zoning requirements prescribing conditions of business or manufacturing designed to avoid nuisance or annoyance, 173 ALR 271.

Constitutionality of zoning based on size of commercial or industrial enterprises or units, 7 ALR 2d 1007.

Change in ownership of nonconforming business or use as affecting right to continuance thereof, 9 ALR 2d 1039.

Right to resume nonconforming use after period of nonuse or of a different use from that in effect at or before the time of zoning, 18 ALR 2d 725.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings, 21 ALR 2d 551.

Zoning regulations applicable to tourists or trailer camps, motor courts or motels, 22 ALR 2d 793.

Violation of zoning ordinance or regulation as affecting or creating liability for injuries or death, 31 ALR 2d 1469.

Zoning regulations as applied to

schools, colleges, universities, and the like, 36 ALR 2d 653.

Validity of zoning regulation prohibiting residential use in industrial district, 35 ALR 2d 1141.

Validity of zoning regulations with respect to uncertainty and indefiniteness of district boundary lines, 39 ALR 2d 768.

Permissible activities under zoning laws permitting greenhouses and nurseries, 40 ALR 2d 1450.

What zoning regulations are applicable to territory annexed to a municipality, 41 ALR 2d 1463.

Power to terminate lawful nonconforming use existing when zoning ordinance was passed, after use has been permitted to continue, 42 ALR 2d 1146.

What is a "club" or "clubhouse" within provisions of zoning regulations, 52 ALR 2d 1098.

Attack on validity of zoning statute, ordinance, or regulation on ground of improper delegation of authority to board or officer, 58 ALR 2d 1083.

Applicability of zoning regulations to

governmental projects or activities, 61 ALR 2d 970.

Variance or exception with respect to access to industrial, commercial, or business premises over premises differently zoned, 63 ALR 2d 1450.

What is a lodginghouse or boardinghouse within provisions of zoning ordinance or regulation, 64 ALR 2d 1167.

Zoning regulations prohibiting or limiting fences, hedges, or the like, 66 ALR 2d 1294.

Zoning regulations as affecting churches, 77 ALR 2d 377.

Construction and application of terms "agricultural", "farm", "farming", or the like, in zoning regulations, 97 ALR 2d 702.

Application of zoning regulations to automatic vending machines, 11 ALR 3d 1004.

Law Review.

Powers and Procedures of City and Village Governing Board, 31 N. D. L. Rev. 137.

40-47-02. Division of city into districts to carry out regulations.—The governing body may divide the city into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter, and may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land within such districts. All regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

Source: S. L. 1923, ch. 175, § 2; C. L. 1913, 1925 Supp., § 3756a2; R. C. 1943, § 40-4702.

40-47-03. Regulation for zoning made for what purposes.—The regulations provided for in this chapter shall be made in accordance with a comprehensive plan and shall be designed to:

1. Lessen congestion in the streets;
2. Secure safety from fire, panic, and other dangers;
3. Promote health and the general welfare;
4. Provide adequate light and air;
5. Prevent the over-crowding of land;
6. Avoid undue concentration of population; and
7. Facilitate adequate provisions for transportation, water, sewage, schools, parks, and other public requirements.

The regulations shall be made with reasonable consideration as to the character of each district and its peculiar suitability for particular uses

with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

Source: S. L. 1923, ch. 175, § 3; C. L. 1913, 1925 Supp., § 3756a3; R. C. 1943, § 40-4703. and alike upon all residents of each district is not unreasonable or arbitrary and is clearly within the power granted to the city by the legislature. City of Bismarck v. Hughes, 53 ND 838, 208 NW 711.

Reasonable Ordinance.

An ordinance which operates equally

40-47-04. Determining and enforcing regulations—Public hearing and notice thereof.—The governing body of a city which shall use zoning regulations shall provide for the manner in which the regulations and restrictions shall be established, enforced, or supplemented, and for the manner in which the boundaries of the districts shall be established

and from time to time changed. No regulation, restriction, or boundary shall become effective until after a public hearing thereon at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and the place of such hearing shall be published in the official newspaper of the city and such notice shall contain a description of any property involved in any zoning change, by street address if streets have been platted or designated in the area affected.

Source: N.D.C.C.; S. L. 1971, ch. 417.

40-47-05. Amendments to or repeals of zoning regulations—Protest—Required vote for passage—Regulations governing.—Regulations, restrictions, and boundaries may be amended, supplemented, changed, modified, or repealed from time to time. If a protest against a change, supplement, modification, amendment, or repeal is signed by the owners of twenty percent or more:

1. Of the area of the lots included in such proposed change; or
2. Of the area adjacent, extending one hundred and fifty feet from the area to be changed, excluding the width of streets,

the amendment shall not become effective except by the favorable vote of three-fourths of all the members of the governing body of the city. The provision of section 40-47-04 relating to public hearings and official notice shall apply equally to all changes or amendments provided in this section, provided that protests in writing must be filed with the city auditor prior to the time set for the hearing.

Source: S. L. 1923, ch. 175, § 5; C. L. § 40-4705; S. L. 1953, ch. 260, § 1; 1957, 1913, 1925 Supp., § 3756a5; R. C. 1943, ch. 290, § 1; 1957 Supp., § 40-4705.

40-47-06. Zoning commission—Appointment—Duties—Preliminary and final report.—The governing body of a city desiring to avail itself of the powers conferred by this chapter shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The governing body shall not hold its public hearings or take action until it has

received the final report of the zoning commission. If a city has a planning commission, it may be appointed as the zoning commission.

Source: S. L. 1923, ch. 175, § 6; C. L. 1913, 1925 Supp., § 3756a6; R. C. 1943, § 40-4706.

40-47-07. Board of adjustment—Members—Term—Hear and decide appeals and review orders.—The governing body may provide for the appointment of a board of adjustment consisting of five members, each member to be appointed for a term of three years. The board of adjustment shall hear and decide appeals from and shall review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this chapter. It shall hear and decide all matters referred to it or upon which it is required to pass under any such ordinance. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official or to decide in favor of the applicant any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance. Upon request of the board, the governing body shall have the right to appoint an alternate member of said board of adjustment, who shall sit as an active member when and if a member of said board is unable to serve at any hearing.

1973 SUPPLEMENT

Source: N.D.C.C.; S. L. 1971, ch. 418,

40-47-08. Appeal to board of adjustment—Taking—Filing—Time—Transmitting record.—An appeal to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the city. The appeal shall be taken within the time prescribed by rule of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken forthwith shall transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

Source: S. L. 1923, ch. 175, § 7; C. L. 1913, 1925 Supp., § 3756a7; R. C. 1943, § 40-4703.

40-47-09. Hearing of appeal by board of adjustment—Notice—Authority of board—Items taken into consideration by board.—The board of adjustment shall fix a reasonable time for the hearing of the appeal and shall give due notice thereof to the parties. It shall decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board may reverse or affirm, in whole or in part, or may modify, the order, requirement, decision, or determination appealed from, and shall make such order, requirement, decision, or determination as in its opinion ought to be made in the premises, and to that end, the board shall have all the powers of the officer from whom the appeal is taken. Where there is practical difficulty or unnecessary hardship in the way of carrying out the strict letter of the ordinance, the board, in passing upon an appeal, may vary or modify any of the regulations or provisions of the ordinance relating to the use, construction, or alteration of buildings or structures or the uses of land so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

Source: S. L. 1923, ch. 175, § 7; C. L. 1913, 1925 Supp., § 3756a7; R. C. 1943, § 40-4709.

40-47-10. Effect of appeal to board of adjustment — Restraining order.—An appeal to the board of adjustment stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay, in his opinion, would cause imminent peril to life or property. In such a case, proceedings shall not be stayed except by a restraining order which may be granted by the board of adjustment or by a court of record on application and on due cause shown after notice to the officer from whom the appeal is taken.

Source: S. L. 1923, ch. 175, § 7; C. L. 1913, 1925 Supp., § 3756a7; R. C. 1943, § 40-4710.

40-47-11. Determination of board of adjustment reviewable by certiorari.—Every decision of the board of adjustment shall be subject to review by certiorari. The application for a writ of certiorari shall be made to the district court of the county in which the city is situated within fifteen days after notice of the decision of the board, and such writ shall be returnable within twenty days after the rendition of such decision. The court may take such evidence as may be required to determine the questions presented. The supreme court, upon application filed within fifteen days after the determination of the district court, shall review the action of the district court by certiorari.

Source: S. L. 1923, ch. 175, § 7; C. L. 1913, 1925 Supp., § 3756a7; R. C. 1943, § 40-4711.

When Writ Does Not Lie.
Certiorari does not lie to review the discretion of the board of adjustment in

refusing an apartment house permit in a residence district. *Livingston v. Peterson*, 59 ND 104, 228 NW 816.

40-47-12. Instituting action to restrain, correct, or abate violations.—If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this chapter or of any ordinance or other regulation made under the authority conferred by this chapter, the proper local authorities of the city, in addition to other remedies, may institute any appropriate action or proceeding:

1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
2. To restrain, correct, or abate such violation;
3. To prevent the occupancy of the building, structure, or land; or
4. To prevent any illegal act, conduct, business, or use in or about such premises.

Source: S. L. 1923, ch. 175, § 8; C. L. 1913, 1925 Supp., § 3756a8; R. C. 1943, § 40-4712.

40-47-13. Conflict between regulations adopted under this chapter and other laws, ordinances, or regulations.—If the regulations made under the authority of this chapter require a greater width or size of yards or courts, or require a lower height of building or a lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under the authority of this chapter shall govern. If the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of building or a lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under the authority of this chapter, the provisions of such statute or local ordinance shall govern.

Source: S. L. 1923, ch. 175, § 9; C. L. 1913, 1925 Supp., § 3756a9; R. C. 1943, § 40-4713.

restrict powers previously granted to cities to adopt reasonable ordinances with respect to lot usage. *Ujka v. Sturdevant*, 65 NW 2d 292.

Previously Granted Powers.

The enactment of this statute did not,

CHAPTER 23-10

TOURIST CAMPS

Section		Section	
23-10-01	Definitions.	23-10-07	Sanitation and safety.
23-10-02	State laboratories department to make regulations—Inspection.	23-10-08	Sickness in motor or trailer courts—Penalty for failure to report.
23-10-03	License required—Application.	23-10-09	Guest record.
23-10-04	Inspection before license granted—Basis of fees.	23-10-10	Posting rules and regulations.
23-10-05	License fees.	23-10-11	Ejection from premises.
23-10-06	License granted — Form — Transferable.	23-10-12	Revocation of license—Penalty for operating without license.

23-10-01. Definitions.—In this chapter, unless the context or subject matter otherwise requires:

1. "Motor court" includes every plot of land equipped with buildings or structures, or any part thereof, kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations, with or without cooking facilities, are furnished to the public for periods of less than one week and shall include only such establishments where buildings or structures have guest units

opening to the outside, and where accommodations include parking space for at least one motor vehicle to each guest unit, and shall include establishments known as motels, cabins, camps or by whatever name the same may be called.

2. "Trailer court" includes every plot of land kept, used, maintained, advertised, or held out to the public as a place for use by transient guests for parking trailers or trailer coaches, which plot of land is of such size as to accommodate two or more trailer coaches.

Source: S. L. 1955, ch. 175, § 1; R. C. 1943, 1957 Supp., § 23-1001; S. L. 1963, ch. 208, § 7.

Cross-Reference.

Word defined by statute always has same meaning, see § 1-01-09.

Collateral References.

Innkeepers—3.

Generally as to public regulation, see 40 Am. Jur. 2d, Hotels, Motels, and Restaurants, §§ 28-48.

43 C. J. S. Innkeepers, §§ 4-7.

Maintenance or regulation by public authorities of tourist or motor camps, courts or motels, 22 ALR 2d 774.

23-10-02. State laboratories department to make regulations—Inspection.—The state laboratories department shall have general supervision of the health and sanitary condition of all motor and trailer courts in this state and may make, promulgate, and enforce such rules and regulations as may be necessary or desirable for the preservation of the same. The department and its inspectors shall have access to the premises of each motor or trailer court, and every part thereof, at such times as may be proper and reasonable for the inspection thereof.

Source: S. L. 1931, ch. 299, § 5; R. C. 1943, § 23-1002; S. L. 1955, ch. 175, § 2; 1957 Supp., § 23-1002.

Cross-Reference.

State laboratories department, see ch. 19-01.

23-10-03. License required—Application.—No person, firm, or corporation, municipal or private, shall establish or maintain a motor or trailer court in this state without first obtaining a license therefor from the state laboratories department. The application for such license shall be made in writing to the department and shall state the location and type of the court, the number of sleeping rooms, the proposed water supply therefor, the proposed method of sewerage and garbage disposal, and such other information as may be required by the department. Forms for such application shall be prepared by the department and distributed upon request.

Source: S. L. 1931, ch. 299, §§ 2, 3; R. C. 1943, § 23-1003; S. L. 1955, ch. 175, § 3; 1957 Supp., § 23-1003.

23-10-04. Inspection before license granted—Basis of fees.—As soon as possible after the receipt of an application, the state laboratories department shall cause an inspection of the premises to be made, and if the department is satisfied from the application and inspection that the existing or proposed motor or trailer court will not be a source of

danger to the health of the guests of the court or to the general public, it shall notify the applicant of its approval of such court and of the amount of the fees for a license therefor. Fees shall be charged and collected upon the basis of the number of sleeping rooms available for use by guests for hire. A license fee, however, shall not be charged for any municipally owned and operated motor or trailer court.

Source: S. L. 1931, ch. 299, § 4; R. C. 1943, § 23-1004; S. L. 1955, ch. 175, § 4; 1957 Supp., § 23-1004.

23-10-05. License fees.—The following fees shall be charged for licenses to operate motor or trailer courts in this state:

1. For a motor court having at least four but not more than ten sleeping rooms, five dollars;
2. For a motor court having more than ten and not more than twenty sleeping rooms, ten dollars;
3. For a motor court having more than twenty and not more than fifty sleeping rooms, twenty dollars;
4. For a motor court having more than fifty sleeping rooms, forty dollars;
5. For a trailer court capable of accommodating at least two but not more than ten trailers, five dollars;
6. For a trailer court capable of accommodating more than ten but not more than twenty trailers, ten dollars;
7. For a trailer court capable of accommodating more than twenty but not more than fifty trailers, twenty dollars;
8. For a trailer court capable of accommodating more than fifty trailers, fifty dollars.

Source: S. L. 1931, ch. 299, § 4; R. C. 1957 Supp., § 23-1005; S. L. 1963, ch. 1943, § 23-1005; S. L. 1955, ch. 175, § 5; 208, § 8.

23-10-06. License granted—Form—Transferable.—Upon receipt of the required license fee and upon the approval of the application, the state laboratories department shall issue a license in writing to the person, firm, or corporation named in the application. Such license shall be upon a form prescribed by the department, shall be for a term of one year from January first to December thirty-first, and shall be renewable upon the same basis as that upon which it was originally issued. The license shall be transferable only with the consent of the department which, upon application, may take up and cancel the original license issued for the operation of the motor or trailer court and issue a new license to the transferee for the balance of the year.

Source: S. L. 1931, ch. 299, § 4; R. C. 1943, § 23-1006; S. L. 1955, ch. 175, § 6; 1957 Supp., § 23-1006.

23-10-07. Sanitation and safety.—Every motor court or trailer court shall be operated with strict regard for health, safety, and comfort of

its patrons. The following sanitary and safety regulations shall be followed:

1. Location: Every motor or trailer court shall be established upon dry, well drained ground. Any natural sinkholes or collection or pool of water shall be artificially drained and filled when the court is first established.
2. Drinking water supply: An adequate supply of potable and safe drinking water shall be provided. Water from other than a municipal supply shall not be used until inspected, tested and certified by this department.
3. Towels: The placing of roller cloth towels for public use in any washroom or place within the court shall be prohibited; however, individual cloth towels, cloth towels provided in mechanical dispensers, individual paper towels and roller paper towels may be used.
4. Toilets: Modern sanitary flush toilets shall be provided where a sewer connection is available; otherwise sanitary fly-proof privies shall be maintained. All toilets and privies shall be kept in a clean, sanitary condition. Separate toilets and privies shall be provided for each sex except where toilets are provided in each guest unit. No privy or cesspool shall be located less than one hundred feet from any well, kitchen or sleeping quarters.
5. Garbage: All garbage and refuse shall be stored in metal fly-proof cans, and the contents removed and disposed of daily, either by burial or incineration. All buildings within the court ground shall be screened against flies and kept in a clean and sanitary condition.
6. Bolts or locks: All guest units used for sleeping purposes shall be equipped with inside bolts or with locks which cannot be opened from the outside with a skeleton key while such room or cabin is occupied, bolted and locked from within.
7. Mattresses and pillows: It shall be unlawful to have upon any bed any mattress of a lower grade than that commonly known to the trade as cotton felt combination. Mattresses must be covered with sheets and the pillows with pillowcases; same to be changed after the departure of each guest.

Source: S. L. 1955, ch. 175, § 7; R. C. 1943, 1957 Supp., § 23-1007.

23-10-08. Sickness in motor or trailer courts—Penalty for failure to report.—Every guest of a court immediately shall report to the person in charge of the court, or to the local or state health authorities, every case of sickness in his or her guest unit. Any person who shall fail to make such report shall be guilty of a misdemeanor and shall be punished by a fine of not more than twenty-five dollars.

Source: S. L. 1931, ch. 299, § 7; R. C. 1943, § 23-1008; S. L. 1955, ch. 175, § 8; 1957 Supp., § 23-1008.

Cross-Reference.

Report of contagious or infectious disease, see § 23-07-02.

23-10-09. Guest record.—A record shall be kept in each motor or trailer court in which every individual patronizing the court shall write his or her name and address and the number of members in his or her party.

Source: S. L. 1955, ch. 175, § 9; R. C. 1943, 1957 Supp., § 23-1009; S. L. 1963, ch. 208, § 9.

Note.
S. L. 1963, chapter 208 contained this section, but no change was made in the text.

23-10-10. Posting rules and regulations.—The owner or keeper of a motor or trailer court shall post in one or more conspicuous places in the court a notice of the provisions of this chapter with reference to sanitation and health and of any and all rules and regulations with reference thereto promulgated by the state laboratories department. At least two copies of such notice shall be furnished to each motor or trailer court by the department.

Source: S. L. 1931, ch. 299, § 12; R. C. 1943, § 23-1010; S. L. 1955, ch. 175, § 10; 1957 Supp., § 23-1010.

23-10-11. Ejection from premises.—The owner or keeper of a motor or trailer court may eject any person from the premises for nonpayment of charges or fees for accommodations, for a violation of law, for disorderly conduct, for a violation of any regulation of the state laboratories department, or for a violation of any rule of the court which is publicly posted within the same.

Source: S. L. 1931, ch. 299, § 10; R. C. 1943, § 23-1011; S. L. 1955, ch. 175, § 11; 1957 Supp., § 23-1011.

Obtaining accommodation in tourist camp by fraud, punishment, see § 12-38-13.

Cross-References.

Liens for keepers of tourist camps, see ch. 35-19.

23-10-12. Revocation of license—Penalty for operating without license.—The state laboratories department may revoke any license issued under the provisions of this chapter upon the failure of the holder thereof to comply with the provisions of this chapter or with any of the rules and regulations made and promulgated by the department. Any person, the members of any firm, and the officers of any corporation, private or municipal, who shall maintain or operate a motor or trailer court without first obtaining a license, or who shall operate the same after the revocation of the license, shall be guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Source: S. L. 1931, ch. 299, § 2; R. C. 1943, § 23-1012; S. L. 1955, ch. 175, § 12; 1957 Supp., § 23-1012.

Cross-Reference.

Cities may regulate tourist camps, see § 40-05-02, subs. 16.

CHAPTER 54-21.1—UNIFORM STANDARDS CODE FOR MOBILE HOMES

Section		Section	
54-21.1-01	Short title.	54-21.1-08	No manufacture or sale of homes not complying with code.
54-21.1-02	Definitions.		
54-21.1-03	Statement of policy.	54-21.1-09	Illegal manufacture or sale —Additional civil remedies of purchasers.
54-21.1-04	Rule-making power.		
54-21.1-05	Uniform state standard.	54-21.1-10	Enforcement by government inspectors.
54-21.1-06	Compliance with superintendent's rule.	54-21.1-11	Violation a misdemeanor.
54-21.1-07	List of recognized inspection agencies; reciprocity with other states.	54-21.1-12	Other remedies of government inspectors.

54-21.1-01. Short title.—This chapter shall be known and may be cited as the "Uniform Standards Code for Mobile Homes Act".

Source: S. L. 1971, ch. 500, § 1.

54-21.1-02. Definitions.—Unless clearly indicated otherwise by the context, the following words when used in this chapter, for the purposes of this chapter only, shall have the following meanings:

1. "Mobile home" means a portable dwelling over thirty-two feet in length and eight feet or more in width, constructed to be moved on its own chassis, and designed without a permanent foundation for year-round occupancy when connected to utilities. It may be a portable dwelling composed of a single unit or it may be one or more components that can be retracted for towing

- purposes and subsequently expanded for additional capacity, and it may be two or more units separately towable, but designed to be joined into one integral unit.
2. "Construction superintendent" means the construction superintendent of the state of North Dakota employed pursuant to section 54-21-17 of the North Dakota Century Code.
 3. "Recognized inspection agency" means an inspection agency having inspection services approved by the construction superintendent and designated by him as an inspection agency for the purposes of this chapter. The construction superintendent shall designate as a "recognized inspection agency" the Underwriters Laboratories or similar inspection services.

Source: S. L. 1971, ch. 500, § 2.

54-21.1-03. Statement of policy.—Mobile homes, because of the manner of their construction and assembly (including heating, plumbing and electrical systems) like other finished products having concealed vital parts, may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. Inspections of the construction of mobile homes frequently cannot satisfactorily be performed after the unit has been manufactured and delivered to this state. It is the policy and purpose of this state to provide protection to the public against possible hazards and for that purpose to forbid the manufacture and sale of mobile homes which are not constructed so as to provide reasonable safety and protection to their owners. Further, a mobile home may during the period of its use be situated in several, various, communities of this state. It is the policy of this state to provide one uniform code of construction for the various localities in which the home may be situated from time to time so that it is possible to manufacture at an economic price a mobile home which may be used without modification in all parts of the state.

Source: S. L. 1971, ch. 500, § 3.

54-21.1-04. Rule-making power.—The construction superintendent shall prepare a Uniform Standards Code for Mobile Homes, containing standards for plumbing, heating, and electrical systems and for body and frame design and construction requirements of mobile homes. This code shall be in conformity with proper methods of construction for health and safety. On July 1, 1971, the construction superintendent shall adopt the standard now designated as Standard ANSI 119.1 by the American National Standards Institute (ANSI), formerly known as the United States of America Standards Institute (USASI), successor to the American Standards Institution (ASA) as the Uniform Standards Code for Mobile Homes. Following July 1, 1971, the construction superintendent may adopt any changes in, or additions to, the standards of the American National Standards Institute or its successor as changes in, or addition to, the Uniform Standards Code for Mobile

54-21.1-04. Before adopting any changes or additions to the code, the construction superintendent shall consult the state electrical board, the state plumbing board, the state fire marshal and the North Dakota Mobile Home Association for their recommendations. The Uniform Standards Code for Mobile Homes shall be promulgated as a regulation of the construction superintendent. The code shall have the force and effect of law.

Source: S. L. 1971, ch. 500, § 4.

54-21.1-05. Uniform state standard.—No other regulation of any local unit of government shall be in variance with the Uniform Standards Code for Mobile Homes. No regulatory agency or local unit of government shall adopt different or more stringent requirements for mobile homes in regard to any item covered by the Uniform Standards Code for Mobile Homes.

Source: S. L. 1971, ch. 500, § 5.

54-21.1-06. Compliance with superintendent's rule.—1. Factory inspection by approved inspection agency: Any mobile home which bears the label or seal of compliance of a recognized inspection agency approved by the construction superintendent and designated by him as an inspection agency, shall be acceptable as meeting the Uniform Standards Code for Mobile Homes without further inspection or fees. A mobile home bearing such a label or seal is subject only to the following local requirements for inspection: zoning, foundations, outside lines, connections and facilities, and alterations and additions made after the mobile home leaves the point of manufacture.

2. Inspection after manufacture: All mobile homes not bearing the label or seal of compliance of a recognized inspection agency approved by the construction superintendent and designated by him as an inspection agency shall be subject to inspection and fees as otherwise authorized or provided by law, to ensure that the mobile home has been manufactured in accordance with the Uniform Standards Code for Mobile Homes.

Source: S. L. 1971, ch. 500, § 6.

54-21.1-07. List of recognized inspection agencies; reciprocity with other states.—The construction superintendent shall have available for the public a list of the recognized inspection services which he has approved. If the construction superintendent determines that standards for mobile homes which have been prescribed in this state's Uniform Standards Code for Mobile Homes are met or exceeded by the statutes or regulations of another state, and further determines that the inspection services for that state are of equal quality with those of this state's recognized inspection agencies, then the construction superintendent shall place such state on a reciprocity list. Any mobile home which bears the appropriate seal of any state which has been placed on the reciprocity list shall be treated the same as a mobile home which bears the seal of the recognized inspection service provided for by

this act, showing compliance with this state's Uniform Standards Code for Mobile Homes.

Source: S. L. 1971, ch. 500, § 7.

54-21.1-08. No manufacture or sale of homes not complying with code.—After January 1, 1972, no persons, firm or corporation may manufacture for sale in North Dakota, or sell in North Dakota, any new mobile home which has been constructed after January 1, 1972, unless such mobile home has been constructed in accordance with the Uniform Standards Code for Mobile Homes. Mobile homes which have been used as living quarters by a consumer shall not be subject to this prohibition against sale.

Source: S. L. 1971, ch. 500, § 8.

54-21.1-09. Illegal manufacture or sale.—Additional civil remedies of purchasers.—If any mobile home is sold in violation of the previous section, then the purchaser, within three years of the date of the sale, at the option of the purchaser, may make written demand on the seller specifying the defect and demanding the defect existing at the time of sale be corrected to conform to the Uniform Standards Code for Mobile Homes. If the seller fails to make such correction within ninety days after receipt of such demand to make such corrections, then the sale may be rescinded, the mobile home returned to the seller, and the seller shall be liable to return to the purchaser the full purchase price paid. The ninety-day period may be extended by the length of time of periods of weather, strikes, civil disturbances, or other acts beyond the control of the seller which prevent correction during such period. Any manufacturer who has sold a mobile home to a licensed mobile home dealer in this state, when such mobile home does not meet the requirements of this chapter, shall be liable to the mobile home dealer for all costs, losses and damages which the dealer may sustain by reason of the manufacturer's failure to comply with this chapter.

Source: S. L. 1971, ch. 500, § 9.

54-21.1-10. Enforcement by government inspectors.—This chapter shall be enforced by the construction superintendent. In addition: the electrical provisions of the code may be enforced by the state electrical board; the plumbing sections of the code may be enforced by the state plumbing board; and the heating sections of the code may be enforced by the state fire marshal. All building inspectors of local governmental units also may enforce this chapter.

Source: S. L. 1971, ch. 500, § 10.

54-21.1-11. Violation a misdemeanor.—Any person who shall knowingly manufacture or sell a mobile home contrary to section 54-21.1-08 shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not to exceed one hundred dollars for each offense.

Source: S. L. 1971, ch. 500, § 11.

54-21.1-12. Other remedies of government inspectors.—The construction superintendent or any of the others named in section 54-21.1-10 of this chapter may institute any appropriate action or proceeding to restrain violations of this chapter or to prevent the occupancy or use of a mobile home manufactured after January 1, 1972, but not complying with the Uniform Standards Code for Mobile Homes, until such violations are corrected.

Source: S. L. 1971, ch. 500, § 12.

CHAPTER 2-04

AIRPORT ZONING

Section	Section
2-04-01 Definitions.	2-04-07 Permits and variances.
2-04-02 Airport hazards contrary to public interest.	2-04-08 Appeals.
2-04-03 Power to adopt airport zoning regulations.	2-04-09 Administration of airport zoning regulations.
2-04-04 Relation to comprehensive zoning regulations.	2-04-10 Board of adjustment.
2-04-05 Procedure for adoption of zoning regulations.	2-04-11 Judicial review.
2-04-06 Airport zoning requirements.	2-04-12 Enforcement and remedies.
	2-04-13 Acquisition of air rights.
	2-04-14 Short title.

2-04-01. Definitions.—As used in this chapter, unless the context otherwise requires:

1. "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interests of the public for such purposes.
2. "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at any airport or is otherwise hazardous to such landing or taking off of aircraft.
3. "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.
4. "Political subdivision" means any county, city, ~~village~~, park district, or township.
5. "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association, the state of North Dakota or any political subdivision thereof, and includes any trustee, receiver, assignee, or other similar representative thereof.
6. "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.
7. "Tree" means any object of natural growth.

Source: S. L. 1945, ch. 40, § 1; R. C. 1943, 1957 Supp., § 2-0401.

101 C. J. S. Zoning, § 17.

Collateral References.

Municipal Corporations \S 601 et seq.
58 Am. Jur., Zoning, § 123.

Zoning regulation as affecting airport and airport sites, 161 ALR 1232.

Applicability of zoning regulations to airport facilities, 61 ALR 2d 988.

1973 SUPPLEMENT

Deleted word "village"

2-04-02. Airport hazards contrary to public interest.—It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking off and maneuvering of aircraft, thus tending to destroy

or impair the utility of the airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

Source: S. L. 1945, ch. 40, § 2; R. C. 1943, 1957 Supp., § 2-0402.

2-04-03. Power to adopt airport zoning regulations.—1. In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

2. Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection 1 in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

3. If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport, has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection 1 and if that political subdivision has refused to join in creating a joint airport zoning board as authorized in subsection 2, the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question. In the event of conflict between such regula-

tions and any airport zoning regulations adopted by the political subdivision within which the airport hazard area is located the regulations of the political subdivision owning or controlling the airport shall govern and prevail.

Source: S. L. 1945, ch. 40, § 3; R. C. 1943, 1957 Supp., § 2-0403.

2-04-04. Relation to comprehensive zoning regulations.—

1. Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

2. Conflict. In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Source: S. L. 1945, ch. 40, § 4; R. C. 1943, 1957 Supp., § 2-0404.

2-04-05. Procedure for adoption of zoning regulations.—

1. Notice and hearing. No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in subsection 2 of section 2-04-03 after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

2. Airport zoning commission. Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city plan commission or comprehensive zoning com-

mission already exists, it may be appointed as the airport zoning commission.

Source: S. L. 1945, ch. 40, § 5; R. C. 1943, 1957 Supp., § 2-0405.

2-04-06. Airport zoning requirements.—

1. Reasonableness. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

2. Non-conforming uses. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in subsection 3 of section 2-04-07.

Source: S. L. 1945, ch. 40, § 6; R. C. 1943, 1957 Supp., § 2-0406.

Cross-Reference.

Obstructing approaches unlawful, see § 2-03-12.

2-04-07. Permits and variances.—

1. Permits. Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

2. Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this chapter may apply to the board of adjustment for

a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this chapter; provided, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

3. Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Source: S. L. 1945, ch. 40, § 7; R. C. 1943, 1957 Supp., § 2-0407.

2-04-08. Appeals.—1. Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this chapter, or any governing body of a political subdivision, or any joint airport zoning board, which is of the opinion that a decision of such administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

2. All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

3. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the board on notice to the agency from which the appeal is taken and on due cause shown.

4. The board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by attorney.

5. The board may in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order,

requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

Source: S. L. 1945, ch. 40, § 8; R. C. 1943, 1957 Supp., § 2-0408.

2-04-09. Administration of airport zoning regulations.—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under subsection 1 of section 2-04-07, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

Source: S. L. 1945, ch. 40, § 9; R. C. 1943, 1957 Supp., § 2-0409.

2-04-10. Board of adjustment.—1. All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to have and exercise the following powers:

- a. To hear and decide appeals from any order, requirement, decision or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in section 2-04-08.
- b. To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.
- c. To hear and decide specific variances under subsection 2 of section 2-04-07.

2. Where a zoning board of appeals or adjustment already exists, it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

3. The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass

under the airport zoning regulations, or to effect any variation in such regulations.

4. The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent, or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

Source: S. L. 1945, ch. 40, § 10; R. C. 1943, 1957 Supp., § 2-0410.

2-04-11. Judicial review.—1. Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is illegal, may present to the district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within fifteen days after the decision is filed in the office of the board.

2. Upon presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such a decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

3. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

4. The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the board of adjustment. The findings of fact of the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

5. Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

6. In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Source: S. L. 1945, ch. 40, § 11; R. C. 1943, 1957 Supp., § 2-0411.

2-04-12. Enforcement and remedies.—Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or imprisonment for not more than ninety days or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

Source: S. L. 1945, ch. 40, § 12; R. C. 1943, 1957 Supp., § 2-0412.

2-04-13. Acquisition of air rights.—In any case in which: 1. It is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or 2. The approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or 3. It appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such air right, navigation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this chapter.

Source: S. L. 1945, ch. 40, § 13; R. C. 1943, 1957 Supp., § 2-0413.

2-04-14. Short title.—This chapter shall be known and may be cited as the "Airport Zoning Act."

Source: S. L. 1945, ch. 40, § 15; R. C. 1943, 1957 Supp., § 2-0414.

CHAPTER 54-34.1—STATE PLANNING DIVISION

Section		Section	
54-34.1-01	Definitions.	54-34.1-04	State planning agency—Powers and duties.
54-34.1-02	State planning agency created.	54-34.1-05	State planning fund—Maintaining and administering—What constitutes.
54-34.1-03	State planning agency—Purposes.		
Section		Section	
54-34.1-06	Director, powers and duties.	54-34.1-11	Regional or metropolitan planning commission — Powers and duties.
54-34.1-08	Assistance to metropolitan, regional or local planning agencies — Application of federal funds in aid of local planning activities.	54-34.1-12	Regional or metropolitan plans—How made effective.
54-34.1-09	Grants to planning commission—Right to contract.	54-34.1-13	Regional or metropolitan development plan — Filing—Distribution.
54-34.1-10	Creation of regional and metropolitan planning areas—Agreement for regional and metropolitan planning.	54-34.1-14	Local governments and planning agencies — Filing of plans and reports — Submission of proposals.
		54-34.1-15	Federal, state and local aid to regional and metropolitan planning commissions.

54-34.1-01. Definitions.—In this chapter, unless the context or subject matter otherwise requires the term “planning agencies” shall mean and include the departments, agencies, instrumentalities of the federal, state, county, township, or municipal governments engaged in planning activities, including regional and metropolitan planning agencies as authorized herein, and educational institutions, research organizations, whether public or private, civic groups, and private persons and organizations engaged in planning activities.

Source: S. L. 1963, ch. 351, § 1.

54-34.1-02. State planning agency created.—In order to promote the health, safety and general welfare of the citizens of this state, there is hereby created a state planning division which, for administrative purposes, will be placed as a division of the department of accounts and purchases and under the director of the department of accounts and purchases. The director of the state planning division shall be appointed by and serve at the pleasure of the governor.

Source: S. L. 1963, ch. 351, § 2; 1969, ch. 447, § 1.

54-34.1-03. State planning agency—Purposes.—It shall be the purpose of the state planning agency to advise, consult, co-ordinate, assist, and contract with or on behalf of the various planning agencies in developing and harmonizing the planning activities of this state. Nothing in this chapter shall operate in derogation of planning powers conferred upon departments, agencies or instrumentalities of state, counties, townships or municipal corporations, by any existing state or local law.

Source: S. L. 1963, ch. 351, § 3.

54-34.1-04. State planning agency—Powers and duties.—The state planning agency shall:

1. Prepare plans for the physical development of this state;
2. Inform, advise, assist, co-operate with, and contract with or on behalf of the various planning agencies;

3. Accept and receive funds, grants and services from the various planning agencies; and
4. Act as fiscal agent for or on behalf of any of the planning agencies;
5. Advise, study, recommend and report to the governor and legislative assembly on all phases of state and local planning;
6. Co-ordinate the planning activities of the various agencies;
7. Exercise all powers necessary and proper for the discharge of its duties.

Source: S. L. 1963, ch. 351, § 4.

54-34.1-05. State planning fund—Maintaining and administering—What constitutes.—A special fund, separate and apart from all public moneys or funds of this state, and known as the state planning fund, is hereby created and shall be maintained in the state treasury and shall be administered by the state planning agency exclusively for the purpose of this chapter. All moneys which are deposited or paid into this fund are appropriated and made available to the state planning agency. The fund shall consist of all moneys appropriated by this state, and all moneys received from the United States of America, or any agency thereof, or from any county, township, municipal corporation or other political subdivision of this state, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed in the manner and under the conditions and requirements provided by law for other special funds in the state treasury. Any balances in this fund, except moneys appropriated by the legislative assembly, shall not lapse at any time, but shall be available continuously to the state planning agency for expenditure consistent with this chapter.

Source: S. L. 1963, ch. 351, § 5.

54-34.1-06. Director, powers and duties.—The director shall be responsible for the operation of such agency and shall exercise all other duties necessary and proper for the discharge of the duties of such agency.

Source: S. L. 1963, ch. 351, § 6.

54-34.1-07. Economic development commission to assist in planning.—Repealed by S. L. 1969, ch. 447, § 2.

54-34.1-08. Assistance to metropolitan, regional or local planning agencies—Application of federal funds in aid of local planning activities.—The state planning agency may render financial or other planning assistance to any governmental planning agency. Such assistance may be conditioned on contributions by the planning agency which requests such assistance, but in any case in which funds or services are requested and received by the state planning agency from any federal agency for planning assistance to such agencies the condition imposed by federal law or regulation shall be carried out.

Source: S. L. 1963, ch. 351, § 8.

54-34.1-09. Grants to planning commission—Right to contract.—The state planning agency or any governmental planning agency is authorized to apply for, accept and expend grants from any other planning agency as defined herein for the purpose of this chapter, and to contract with reference thereto.

Source: S. L. 1963, ch. 351, § 9.

54-34.1-10. Creation of regional and metropolitan planning areas—Agreement for regional and metropolitan planning.—Two or more governmental planning agencies may by agreement establish a regional and metropolitan planning commission. A regional planning area shall consist of one or more adjoining townships and/or counties or parts thereof which have common problems and interests. A metropolitan planning area shall be a regional planning area consisting of one or more municipal corporations and the territory adjacent thereto, which are so interdependent as to form a unit for planning purposes. Such agreement shall include the number and qualifications of the members of any such commission and the terms and method of appointment or removal of such members.

Source: S. L. 1963, ch. 351, § 10.

54-34.1-11. Regional or metropolitan planning commission—Powers and duties.—By such agreement such joint planning commission may be given the authority to exercise any or all the powers and functions conferred by state law upon either or any or all the parties to such agreement, including the power to establish and enforce zoning regulations within the joint planning area.

Source: S. L. 1963, ch. 351, § 11.

54-34.1-12. Regional or metropolitan plans—How made effective.—The governing bodies of each planning agency entering into an agreement for joint regional or metropolitan planning shall make such regional or metropolitan plan or plans or any revision, amendment, extension, or addition thereto effective by following substantially the form of procedure required by law to make effective any local planning within such planning agency. When each such agency has complied with such laws and all the governing bodies of such agencies have adopted such plan and filed the same with regional or metropolitan planning commission and with the governing body of each agency which is a party thereto such plan shall become effective.

Source: S. L. 1963, ch. 351, § 12.

54-34.1-13. Regional or metropolitan development plan—Filing—Distribution.—Upon the preparation of the regional or metropolitan development plan or of any phase or functional part thereof, or upon the preparation of an amendment or revision of the plan or of any part thereof, or upon the preparation of any extension of or addition to the plan, the regional or metropolitan planning commission shall file such

plan, part of a plan, amendment, revision, extension or addition in the office of the director of state planning and with the other planning agencies in adjoining areas.

Source: S. L. 1963, ch. 351, § 13.

54-34.1-14. Local governments and planning agencies—Filing of plans and reports—Submission of proposals.—To facilitate effective and harmonious planning of the regional or metropolitan area, all planning agencies shall file with the appropriate regional or metropolitan planning commission, for its information, all plans, zoning ordinances, official maps, building codes, subdivision regulations, or amendments or revisions of any of them, as well as copies of their regular and special reports dealing in whole or in part with planning matters. County, township or municipal legislative bodies, or county, township, municipal or other local planning agencies may also submit proposals for such plans, ordinances, maps, codes, regulations, amendments or revisions prior to their adoption, in order to afford an opportunity to the regional or metropolitan planning commission to study such proposals and to render its advice thereon.

Source: S. L. 1963, ch. 351, § 14.

54-34.1-15. Federal, state and local aid to regional and metropolitan planning commissions.—Any planning agency may request and accept grants of funds or services from the federal government or any other planning agency.

Source: S. L. 1963, ch. 351, § 15.

CHAPTER 11-33 COUNTY ZONING *

Section		Section	
11-33-01	County power to regulate property.	11-33-04	County planning commissions authorized—Membership.
11-33-02	Board of county commissioners to designate districts.	11-33-05	Meetings—Officers.
11-33-03	Object of regulations.	11-33-06	Investigations.
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Section		Section	
11-33-07	County planning commission to prepare plan.	11-33-16	Enforcement.
11-33-08	Hearings.	11-33-17	Violation of zoning regulations and restrictions—Remedies.
11-33-09	Publication of resolutions.	11-33-18	Board of county commissioners authorized to issue permits—Appropriate money.
11-33-10	Separate hearings.	11-33-19	Joint planning commission may be established.
11-33-11	May adjust enforcement.	11-33-20	Township zoning not affected—Township and municipalities may relinquish powers.
11-33-12	Appeals to district court.	11-33-21	General penalties for violation of zoning regulations and restrictions.
11-33-13	Not to affect use.		
11-33-14	Nonconforming uses regulated.		
11-33-15	Board of county commissioners to make complete list.		

*See reproduced sections under IC-1a

CHAPTER 11-35—REGIONAL PLANNING AND ZONING COMMISSIONS

Section	Section
11-35-01 Regional commissions — Appointment—Powers.	11-35-02 Zoning of territory adjacent to cities.

11-35-01. Regional commissions—Appointment—Powers.—The governing boards of counties, municipal corporations, and organized townships may cooperate to form, organize, and administer a regional planning and zoning commission for the region defined as may be agreed upon by the governing bodies of such political subdivisions. The regional commission membership shall consist of five members; namely, one from the board of county commissioners, two from the rural region affected, and two from the municipality, the members from each to be appointed by the respective governing boards. The proportion of cost of regional planning, zoning, studies, and surveys to be borne respectively by each of the said political subdivisions in the region, shall be such as may be agreed upon by their governing boards. The regional commissions, when requested by the governing board of a political subdivision in its region, may exercise any of the powers which are specified and granted to counties, municipal corporations, or organized townships in matters of planning and zoning. Upon organization of such commission, publication and hearing procedures shall be conducted pursuant to sections 11-33-08 and 11-33-09. Appeal from a decision of the commission may be taken to the district court.

Source: S. L. 1967, ch. 105, § 1.

11-35-02. Zoning of territory adjacent to cities.—Until the organization of either a regional planning and zoning commission as provided in section 11-35-01 or township or county zoning commission pursuant to sections 58-03-11 through 58-03-15 and chapter 11-33, respectively, any municipal corporation which shall determine to use zoning regulations shall have exclusive jurisdiction and power to zone over all land over which it has authority to control subdivisions and platting of land as provided in section 40-48-18.

Source: S. L. 1967, ch. 105, § 2.

CHAPTER 40-48

MUNICIPAL MASTER PLANS AND PLANNING COMMISSIONS

Section	Section
40-48-01 Definitions.	40-48-03 Planning commission — Creation — Members — Ex officio members.
40-48-02 Official master plan may be established — Filing — Effect—Purpose.	
Section	Section
40-48-04 Term of members of commission—Vacancies.	40-48-20 Regulations governing subdivision of land—Contents—Hearing — Publication — Filing regulations.
40-48-05 Compensation—Traveling expenses.	40-48-21 Approval of plats by commission — Hearings — Notice —Effect.
40-48-06 President of commission — Meetings—Record to be kept —Appointment officers and employees — Power to contract.	40-48-22 Items considered in approving plat—Notations made on plat—Deed delivered to municipality or county.
40-48-07 Limitations on expenditures of commission — Tax levy authorized.	40-48-23 Penalty for transfer of lots in unapproved subdivision—Injunction—Civil action.
40-48-08 Master plan—Adoption—Contents—Part of plan may be published—Amending.	40-48-24 Improvements in unapproved streets — Regulations governing.
40-48-09 Surveys and studies made before making plan—Purpose of plan.	40-48-25 Erection of buildings on unapproved streets — Regulations governing.
40-48-10 Hearing on plan before adoption by commission—Resolution to adopt—Action recorded on plan and maps—Governing body to receive copy of plan.	40-48-26 Exclusive jurisdiction of planning commission — Exception.
40-48-11 Hearing on plan by governing body—Notice—Changes in plan—Notice to planning commission—Disapproval of changes.	40-48-27 Interpretation of harmonious and conflicting statutes.
40-48-12 Permission to construct when plan adopted — Disapproval of permission — Overruling —Failure to act on permission.	40-48-28 Maps showing reservations and future acquisitions for streets — Hearing — Notice — Approval by governing body — Modifications—Filing.
40-48-13 Miscellaneous duties of planning commission.	40-48-29 Effect of approval and adoption of map.
40-48-14 Miscellaneous powers of planning commission.	40-48-30 Commission may secure releases of claims for damages or compensation—Effect.
40-48-15 Public officials to cooperate with planning commission.	40-48-31 Modification of street lines—When allowed—Agreement—Approval of new map—Filing map — Abandoning reservation.
40-48-16 Governing body may add to or change master plan—Notice — Regulations governing.	40-48-32 Resolution adopting street map — When effective — Notice—Contents—Protest.
40-48-17 Submission of matters to planning commission before governing body takes action thereon.	40-48-33 Examination of protests by engineer and attorney — Hearing—Notice.
40-48-18 Jurisdiction of subdivision—Approval of county planning commission necessary —Failure to agree.	40-48-34 Granting or denying protests — Regulations governing — When resolution effective.
40-48-19 Major street plan adopted by commission — Regulations governing filing and approval of plat.	40-48-35 Resolution and map recorded upon adoption.
	40-48-36 Protest against resolution as a taking of property—Regulations governing.
	40-48-37 Failure to file claim is waiver.
	40-48-38 Penalty for violations.

MUNICIPAL MASTER PLANS AND PLANNING COMMISSIONS

40-48-01. Definitions.—In this chapter, unless the context or subject matter otherwise requires:

1. "Street" includes streets, highways, avenues, boulevards, parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements and rights of way, and other ways;
2. "Subdivision" means the division of a tract or parcel or land into lots for the purpose, whether immediate or future, of sale or of building development, and any plat or plan which includes the creation of any part of one or more streets, public easements, or other rights of way, whether public or private, for access to or from such lots, and the creation of new or enlarged parks, playgrounds, plazas, or open spaces.

Source: S. L. 1929, ch. 177, § 12; R. C. 1943, § 40-4801.

40-48-02. Official master plan may be established—Filing—Effect—Purpose.—Any municipality, by an ordinance of its governing body, may establish an official master plan of the municipality. Such ordinance shall make it the duty of some appropriate official or employee of the municipality to file for record immediately with the register of deeds of the county in which the area covered by the plan is situated, a certificate showing that the municipality has established an official master plan. Such plan shall be final and conclusive with respect to the location and width of streets, ways, plazas, open spaces, and public easements, and the location of parks and playgrounds, and the establishment of public rights in lands shown thereon. The official master plan is declared to be established to conserve and promote the public health, safety, and general welfare of the municipality.

Source: S. L. 1929, ch. 177, § 1; R. C. 1943, § 40-4802.

40-48-03. Planning commission — Creation — Members — Ex officio members.—The governing body of any municipality may create, by ordinance, a planning commission to consist of not more than ten members to be appointed by the executive officer of the municipality with the approval of its governing body. The executive officer, the engineer, and the attorney of the municipality shall be ex officio members of the commission.

Source: N.D.C.C.; S. L. 1969, ch. 380, § 1.

1973 SUPPLEMENT

40-48-04. Terms of members of commission—Vacancies.—The present members of the commission shall hold office for the balance of their tenure. Of the members of the commission newly appointed, pursuant to this chapter, the first member appointed, if one be appointed, shall hold office for the term of one year, if a second member is appointed he shall hold office for the term of two years, if a third member is appointed he shall hold office for the term of three years, if a fourth member is appointed he shall hold office for the term of four years, and if a fifth member is appointed he shall hold office for the term of five years from and after his appointment. Thereafter, the members

1973 SUPPLEMENT

40-48-05 MUNICIPAL GOVERNMENT
shall be appointed for terms of five years. The terms of the ex officio members of the commission shall correspond to their respective official tenures. If a vacancy occurs otherwise than by expiration of a term, it shall be filled by appointment for the unexpired portion of the term.

Source: N.D.C.C.; S. L. 1969, ch. 380,
§ 2.

40-48-05. Compensation—Traveling expenses.—All members of the planning commission shall serve without compensation. When duly authorized by the commission, members thereof may attend planning conferences or meetings of planning institutes or hearings upon pending legislation, and the commission may pay the reasonable traveling expenses incident to such attendance pursuant to a resolution spread upon its minutes.

Source: S. L. 1929, ch. 177, § 2; R. C.
1943, § 40-4805.

40-48-06. President of commission—Meetings—Record to be kept—Appointment officers and employees—Power to contract.—The planning commission shall elect its president for a term of one year from among the appointed members. The commission shall hold at least one regular meeting in each month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings, and determinations, and such record shall be a public record. The commission may appoint such officers and employees as it may deem necessary for its work, and the appointment, promotion, demotion, and removal of such officers and employees shall be subject to the same provisions of law as govern other corresponding civil employees. The commission may contract with architects, city planners, engineers, and other consultants for such services as it may require.

Source: S. L. 1929, ch. 177, § 3; R. C.
1943, § 40-4806.

40-48-07. Limitations on expenditures of commission—Tax levy authorized.—The expenditures of the planning commission, exclusive of gifts, shall be within the amounts appropriated for that purpose by the governing body of the municipality. Such governing body shall provide the funds, equipment, and accommodations necessary for the commission's work. Each municipality which has established a planning commission, in making its annual tax levy and as a part thereof, may levy and collect a tax of not to exceed one mill on the dollar of assessed valuation in any fiscal year for the purpose of defraying the lawful expenses incurred by the planning commission in carrying out the purposes of this chapter. Provided that any municipality, in order to obtain the funds necessary to initiate or undertake a comprehensive study of the planning requirements of such municipality, may, without regard to any tax limitation herein contained, or otherwise provided by any statute of this state, levy a tax, for a period of not to exceed five successive years, of not more than one mill to raise funds required for such comprehensive study.

Source: S. L. 1929, ch. 177, § 3; R. C.
1943, § 40-4807; S. L. 1959, ch. 312, § 1.

40-48-08. Master plan—Adoption—Contents—Part of plan may be published—Amending.—The planning commission shall make and adopt a master plan for the physical development of the municipality and of any land outside its boundaries which, in the commission's judgment, bears a relation to the planning of the municipality. Such plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission's recommendations for the development of the territory, including:

1. The general locations, character, and extent of streets, waterways, waterfronts, playgrounds, plazas, squares, and open spaces, parks, aviation fields, and other public ways and grounds;
2. The general location of public buildings and other public property;
3. The general location and extent of public utilities and terminals whether publicly or privately owned or operated;
4. The removal, relocation, widening, narrowing, vacation, abandonment, change of use, or extension of any of the foregoing ways, grounds, open spaces, buildings, property, terminals, or utilities; and
5. Other matters authorized by law.

The commission, from time to time, may adopt and publish a part of the plan covering one or more major sections or divisions of the territory under its jurisdiction or one or more of the subjects set out in this section or other subjects. The commission, from time to time, may amend, extend, or add to the master plan.

Source: S. L. 1929, ch. 177, § 4; R. C. 1943, § 40-4808.

40-48-09. Surveys and studies made before making plan—Purpose of plan.—In the preparation of the master plan, the planning commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality with due regard to its relation to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the municipality and its environs, which, in accordance with present and future needs, best will promote the amenities of life, health, safety, morals, order, convenience, prosperity, and general welfare as well as efficiency and economy in the process of development, including adequate provision for light and air, distribution of population, good civic design and arrangement, wise and efficient expenditure of public funds, the adequate provision of public utilities and other public requirements, the improvement and control of architecture, and the general embellishment of the area under its jurisdiction.

Source: S. L. 1929, ch. 177, § 5; R. C. 1943, § 40-4809.

40-48-10. Hearing on plan before adoption by commission—Resolution to adopt—Action recorded on plan and maps—Governing body to receive copy of plan.—Before adopting the master plan or any part of

it or any substantial amendment thereof, the planning commission shall hold at least one public hearing thereon. Notice of the time of such hearing shall be given by one publication in the official municipal newspaper. The adoption of the plan, or of a part thereof or amendment thereto, shall be by a resolution of the commission carried by the affirmative votes of not less than two-thirds of the members thereof. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan or amendment. The action taken by the commission shall be recorded on the map, plan, and descriptive matter by the identifying signature of the secretary of the commission. An attested copy of the master plan shall be certified to the governing body of the municipality.

Source: N.D.C.C.; S. L. 1969, ch. 380,
§ 3.

1973 SUPPLEMENT

40-48-11. Hearing on plan by governing body—Notice—Changes in plan—Notice to planning commission—Disapproval of changes.—Upon receipt of an attested copy of the master plan or of any part thereof after the adoption thereof by the planning commission, the governing body shall hold a public hearing thereon. At least ten days' notice of such hearing shall be published in the official municipal newspaper. No change or addition to the master plan or any part of it as adopted by the planning commission shall be made by the governing body until the proposed change or addition shall have been referred to the planning commission for report thereon and an attested copy of the commission's report is filed with the governing body. The failure of the planning commission to report within thirty days after the date of the request for the report by the governing body shall be deemed to be an approval by the commission of the additions or changes. If the additions or changes are disapproved by the commission, a two-thirds vote of the entire governing body shall be necessary to pass any ordinance overruling such disapproval.

Source: S. L. 1929, ch. 177, § 7; R. C.
1943, § 40-4811.

40-48-12. Permission to construct when plan adopted—Disapproval of permission—Overruling—Failure to act on permission.—When the governing body shall have adopted the master plan of the municipality or any major section or district thereof, no street, square, park, or other public way, ground, or open space, or public building or structure shall be constructed or authorized in the area shown on the master plan until the location, character, and extent thereof shall have been submitted to and approved by the planning commission. In case of disapproval thereof, the commission shall communicate its reasons to the governing body, which may overrule such disapproval by a recorded vote of not less than two-thirds of its entire membership. If the public way, ground, space, building, or structure is one the construction, financing, or authorization of which does not fall within the province

of the governing body, the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by said board, commission, or body by a vote of not less than two-thirds of its membership. The failure of the commission to act upon such submission within sixty days from and after the date of the official submission to the commission shall be deemed to be an approval.

Source: S. L. 1929, ch. 177, § 8; R. C. 1943, § 40-4812.

40-48-13. Miscellaneous duties of planning commission.—The planning commission shall:

1. Recommend to the appropriate public officials, from time to time, programs for specific improvements and for the financing thereof; and
2. Consult and advise with public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and with citizens relative to the carrying out of the plan.

Source: S. L. 1929, ch. 177, § 9; R. C. 1943, § 40-4813.

40-48-14. Miscellaneous powers of planning commission.—The planning commission may:

1. Promote public interest in and understanding of the master plan, and for that purpose, it may publish and distribute copies of the plan or of any part thereof or of any report, and may employ such other means of publicity and education as it may determine;
2. Accept and use gifts for the exercise of its functions;
3. By its members, officers, and employees in the performance of their functions, enter upon any land and make examinations and surveys thereof and place and maintain necessary monuments or marks thereon; and
4. Exercise such other powers as may be necessary to enable it to fulfill its functions and carry out the provisions of this chapter.

Source: S. L. 1929, ch. 177, § 9; R. C. 1943, § 40-4814.

40-48-15. Public officials to cooperate with planning commission.—All public officials, upon request, shall furnish to the planning commission, within a reasonable time after such request, such information as the commission may require in connection with its work.

Source: S. L. 1929, ch. 177, § 9; R. C. 1943, § 40-4815.

40-48-16. Governing body may add to or change master plan.—Notice—Regulations governing.—Whenever the governing body of the municipality may deem it for the public interest, it may change or add to the official master plan by laying out new streets, improvements, or con-

veniences mentioned in this chapter or by widening, enlarging, closing, or abandoning existing streets, improvements, or conveniences. At least ten days' notice of a public hearing on any proposed action with reference to such change in the official master plan shall be published in the official newspaper of the municipality. Before any such addition or change is made, the matter shall be referred to the planning commission for report thereon as provided in section 40-48-11. Such additions and changes, when adopted by an ordinance of the governing body, shall become a part of the official master plan of the municipality and shall be deemed to be final and conclusive with respect to all matters shown thereon. The layout, widening, enlarging, closing, or abandoning of streets, plazas, open spaces, and parks or playgrounds by the municipality under provisions of the laws of this state other than those contained in this chapter shall be deemed to be a change or addition to the official master plan and shall be subject to all the provisions of this chapter.

Source: S. L. 1929, ch. 177, § 10; R. C. 1943, § 40-4816.

40-48-17. Submission of matters to planning commission before governing body takes action thereon.—The governing body creating the planning commission, by a general or special rule, may provide for the reference of any other matter or class of matters to the commission before final action is taken thereon by the governing body, or by the municipal officer having the final authority thereon, with the provision that final action shall not be taken thereon until the planning commission has submitted its report or has had a reasonable time, as fixed in said rule, to do so. The planning commission may make such investigations, maps, reports, and recommendations in connection therewith relating to the planning and development of the municipality as to it seems desirable, but the total expenditures of the board in such matters shall not exceed the funds available therefor.

Source: S. L. 1929, ch. 177, § 11; R. C. 1943, § 40-4817.

40-48-18. Jurisdiction of subdivision—Approval of county planning commission necessary—Failure to agree.—The territorial jurisdiction of any municipal planning commission over the subdivision or platting of land shall include all land located in the municipality and all land lying within six miles of the corporate limits of the municipality and not located in any other municipality. In the case of any such nonmunicipal land lying within six miles of more than one municipality having a planning commission, the jurisdiction of each such municipality shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities. The approval of the county planning commission, if there is one, shall be necessary on all plats in areas outside the corporate limits of any municipality. If the county planning commission fails to agree with a city planning commission having jurisdiction over any plat, the board of county commissioners, by a two-thirds

vote of its entire membership, may overrule the findings of one planning commission and approve said plat as recommended by another planning commission.

Source: S. L. 1929, ch. 177, § 13; R. C. 1943, § 40-4818.

Cross-Reference.
Zoning of territory adjacent to cities,
see § 11-35-02.

40-48-19. Major street plan adopted by commission—Regulations governing filing and approval of plat.—Whenever a planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or of a part thereof, and shall have filed a certified copy of such plan in the office of the register of deeds of the county in which such territory or part is located, no plat of a subdivision of land within such territory or part thereof shall be filed or recorded until it shall have been approved by such planning commission and such approval shall have been entered in writing on the plat by the chairman or secretary of the commission.

Source: S. L. 1929, ch. 177, § 14; R. C. 1943, § 40-4819.

40-48-20. Regulations governing subdivision of land—Contents—Hearing—Publication—Filing regulations.—Before exercising the powers referred to in this chapter, the planning commission shall adopt general regulations governing the subdivision of land within its jurisdiction to provide:

1. For the proper arrangement of streets in relation to other existing and planned streets and to the master plan; and
2. For adequate and convenient open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light, and air, for the avoidance of congestion of population, and for easements for building setback lines or for public utility lines.

Such regulations may include requirements as to the minimum width and area of building lots, the extent to which streets and other public ways shall be graded and improved, and to which water and sewer and other utility mains or other facilities shall be installed as a condition precedent to the approval of the plat. Before the adoption of such regulations, a public hearing shall be held thereon. All such regulations shall be published as provided by law, and a copy thereof shall be certified by the governing body of the municipality and filed for record by the commission with the registers of deeds of the counties in which the commission and territory are located.

Source: S. L. 1929, ch. 177, § 15; R. C. 1943, § 40-4820.

40-48-21. Approval of plats by commission—Hearings—Notice—Effect.—Within thirty days after the submission of a plat, the planning commission shall approve or disapprove it. If the plat is not approved or disapproved within such time, it shall be deemed to have been approved,

and a certificate to that effect shall be issued by the commission on demand. The applicant, however, may waive the requirement that the commission shall act within thirty days and may consent to an extension of such period. The ground upon which any plat is disapproved shall be stated upon the records of the commission. Any plat submitted to the commission shall contain the name and address of a person to whom notice of a hearing shall be sent. No action shall be taken by the commission upon any plat until it has afforded a hearing thereon. At least five days before the date fixed for such hearing, a notice of the time and place of such hearing shall be sent by registered or certified mail to the address shown on the plat. Public notice of all such hearings also shall be given. Every plat approved by the commission may be adopted by the commission as an amendment of or addition to the master plan without further hearing.

Source: S. L. 1929, ch. 177, § 16; R. C. 1943, § 40-4821.

Submission of Plat.

Where proposed plat, which did not contain name and address of person to whom notice of hearing could be sent, was filed with city auditor, who had no connection with the planning commis-

sion, it did not constitute submission of plat to commission for approval as required by this section although the governing body of the city had discussed the plat and referred it to the commission for its study and return. *Schonberg v. City of Fargo Planning Commission*, 110 NW 2d 830, 832.

40-48-22. Items considered in approving plat—Notations made on plat—Deed delivered to municipality or county.—Before the approval of a plat, the planning commission and the governing body shall take into consideration the prospective character of the development of the area included in the plat and of the surrounding territory. The owner of the land or his agent who files the plat may add as a part of the plat a notation to the effect that no offer or dedication of the streets, parks, or playgrounds shown thereon, or of any of them, is made to the public. He may show by a dotted line on the plat the dedication of an easement for building setback lines or for use in establishing public utility lines. At the time of the filing of the plat, the planning commission or the governing body may require that a deed to the fee for streets or other areas offered for dedication to the public on said plat be delivered to the municipality or county, as the case may be, where the same are located.

Source: S. L. 1929, ch. 177, § 17; R. C. 1943, § 40-4822.

40-48-23. Penalty for transfer of lots in unapproved subdivision—Injunction—Civil action.—Any owner, or the agent of any owner, of land located within the territory of a subdivision that is subject to the approval of a planning commission or governing body of a municipality who transfers, sells, agrees to sell, or negotiates to sell any land by reference to or exhibition of a plat of a subdivision, or by any other use thereof, before such plat has been approved by the planning commission and governing body and recorded as approved in the office of

the appropriate register of deeds, shall forfeit and pay a penalty of one hundred dollars for each lot or parcel transferred or sold or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided in this section. The municipality may enjoin such transfer, sale, or agreement by an action for injunction, or it may recover the penalty by a civil action.

Source: S. L. 1929, ch. 177, § 18; R. C. 1943, § 40-4823.

40-48-24. Improvements in unapproved streets—Regulations governing.—The municipality shall not accept, lay out, open, improve, grade, pave, or curb any street, or lay or authorize the laying of sewers or connections in any street or right of way within any portion of territory for which the planning commission shall have adopted a major traffic street plan unless such street:

1. Shall have been accepted or opened as, or otherwise shall have received the legal status of, a public street prior to the adoption of such plan; or
2. Corresponds with a street shown on the official master plan or with a street on a subdivision plat approved by the planning commission or with a street on a street map made and officially adopted by the commission.

The governing body, however, may accept any street not shown or not corresponding with a street on the official master plan or on an approved subdivision plat or an approved street map if the ordinance or other measure accepting such street first is submitted to the planning commission for its approval, and, if approved by the commission, it is enacted or passed by not less than a majority of the entire membership of the governing body, or, if disapproved by the commission, it is enacted or passed by not less than two-thirds of the entire membership of the governing body. A street approved by the planning commission upon submission by the governing body or a street accepted by a two-thirds vote of the governing body after disapproval by the planning commission shall have the status of an approved street as fully as though it originally had been shown on the official master plan or on a subdivision plat approved by the planning commission or originally had been mapped by the commission.

Source: S. L. 1929, ch. 177, § 20; R. C. 1943, § 40-4824.

40-48-25. Erection of buildings on unapproved streets—Regulations governing.—After the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction, or of any part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor, unless the street giving access to the lot upon which it is proposed to place

such building shall have been accepted or opened as is provided in section 40-48-24. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and to be removed.

Source: S. L. 1929, ch. 177, § 21; R. C. 1943, § 40-4825.

40-48-26. Exclusive jurisdiction of planning commission—Exception.—After the adoption of a major traffic street plan by any planning commission, the jurisdiction of the planning commission over plats shall be exclusive within the territory under its jurisdiction, except as otherwise provided in section 40-48-18.

Source: S. L. 1929, ch. 177, § 22; R. C. 1943, § 40-4826.

40-48-27. Interpretation of harmonious and conflicting statutes.—All statutory control over plats or subdivisions of land granted by other statutes, in so far as such control is in harmony with the provisions of this chapter, shall be deemed transferred to the planning commission, and in so far as such control is inconsistent with the provisions of this chapter, the provisions of this chapter shall govern in a municipality which has established a planning commission.

Source: S. L. 1929, ch. 177, § 22; R. C. 1943, § 40-4827.

40-48-28. Maps showing reservations and future acquisitions for streets—Hearing—Notice—Approval by governing body—Modifications—Filing.—After it has adopted any part of a master plan for any part of the territory within its planning jurisdiction, the planning commission may make or cause to be made, from time to time, surveys for the exact location of the lines of a street or streets shown in any portion of such master plan and may make a map of the land thus surveyed showing precisely the land which it recommends to be reserved for future acquisition for public streets. Before adopting any such map, the planning commission shall hold a public hearing thereon. A notice of the time and place of the hearing, with a general description of the district or area covered by the map, shall be given not less than ten days previous to the time fixed for the hearing by one publication in the official newspaper of the municipality if the district or area affected is within the municipality, and in a newspaper of general circulation in the county if the district or area affected is outside of the municipality. After such hearing, the commission may transmit the map as originally made, or as modified by it, to the governing body together with the commission's estimate of the time or times within which the lands shown on the map as street locations should be acquired by the municipality. The governing body, by resolution, may approve and adopt or may reject such map, or it may modify the map with the approval of the planning commission, or in the event of the planning commission's disapproval, the governing body by a favorable

vote of not less than two-thirds of its entire membership, may modify such map and adopt the modified map. In the resolution adopting the map, the governing body shall fix the period of time for which the street locations shown upon the map shall be deemed reserved for future taking or acquisition. The city auditor shall file for record an attested copy of the map with the register of deeds of each county in which the mapped land is located and shall retain one copy for examination by the public.

Source: S. L. 1929, ch. 177, § 23; R. C. 1943, § 40-4828; S. L. 1967, ch. 323, § 212.

40-48-29. Effect of approval and adoption of map.—The approval and adoption of a map as provided in section 40-48-28 shall not be deemed the opening or establishment of any street or the taking of any land for street purposes or for public use or as a public improvement, but shall operate solely as a reservation of the street location shown on the map for the period specified in the resolution for future taking or acquisition for public use.

Source: S. L. 1929, ch. 177, § 23; R. C. 1943, § 40-4829.

40-48-30. Commission may secure releases of claims for damages or compensation—Effect.—The commission, at any time, may negotiate for or secure from the owner or owners of any lands described in any map releases of claims for damages or compensation for the reservations shown in the resolution adopting such map or agreements indemnifying the municipality or county from such claims by others. Such releases or agreements shall be binding upon the owner or owners executing the same and upon their successors in title. The commission, however, shall not make awards or fix compensation.

Source: S. L. 1929, ch. 177, § 23; R. C. 1943, § 40-4830.

40-48-31. Modification of street lines—When allowed—Agreement—Approval of new map—Filing map—Abandoning reservation.—At any time after the filing of a map of the kind described in section 40-48-28 for record with the register of deeds and during the period specified for the reservation, the planning commission and the owner of any land containing a reserved street location may agree upon a modification of the location of the lines of the proposed street. Such agreement shall include a release by the owner of any claim for compensation or damages by reason of such modification. Thereupon, the commission may make a map corresponding to the modification and transmit the map to the governing body. If the modified map is approved by the governing body, the city auditor shall file for record an attested copy thereof with the register of deeds, and the modified map shall take the place of the original map. The governing body, by resolution, may

abandon any reservation at any time. Any such abandonment shall be filed for record with the register of deeds.

Source: S. L. 1929, ch. 177, § 23; R. C. 1943, § 40-4831; S. L. 1967, ch. 323, § 213.

40-48-32. Resolution adopting street map—When effective—Notice—Contents—Protest.—The resolution of the governing body adopting any street map provided for in section 40-48-28 shall provide that it shall not become effective for forty days, and shall provide further that it shall not become effective until a notice of the adoption of such resolution has been published once each week for four successive weeks in the official newspaper of the municipality, or, if no newspaper is published within the jurisdiction of the commission, the publication shall be made in the next nearest newspaper in the county. The resolution and the notice shall state a time within which the owners of property lying within or immediately adjoining the lines of the proposed future street opening or widening, or between any future street line and the street nearest the public highway may protest in writing against the adoption of the future street lines.

Source: S. L. 1929, ch. 177, § 24; R. C. 1943, § 40-4832.

40-48-33. Examination of protests by engineer and attorney—Hearing—Notice.—Upon the receipt of any protests within the time fixed by the resolution and the notice, the governing body may cause the same to be examined by its engineer and by its attorney and shall set a time for the hearing of the same. Notice of the hearing shall be given to each protestant at his address, which shall be stated in the protest.

Source: S. L. 1929, ch. 177, § 24; R. C. 1943, § 40-4833.

40-48-34. Granting or denying protests—Regulations governing—When resolution effective.—Upon the hearing of any protest, the governing body may grant or deny the same except that it shall not deny the written protests of the owners of a majority of the area of property lying within any proposed street to be opened or of a majority of the owners of the frontage of a street to be widened and upon which a future street line is established except by a four-fifths vote of such governing body. The governing body may grant or sustain protests as to the entire proposed future street line or lines or only as to a portion thereof. The governing body may deny the protest or protests as to any portion of such proposed future street line or lines concerning which a protest is not granted or sustained. Upon the denial of any such protest, the resolution shall become effective immediately. If no protests are filed, such resolution shall take final effect at midnight of the last day for filing protests.

Source: S. L. 1929, ch. 177, § 24; R. C. 1943, § 40-4834.

40-48-35. Resolution and map recorded upon adoption.—Whenever any resolution adopting a street map shall have become final, the city auditor shall record in the office of the register of deeds of the appropriate county a notice referring to the resolution by number and other appropriate description, including the date of its adoption, and setting forth a description of the property contained within the proposed opening and widening lines or between the future streets lines and the nearest public highway, together with a copy of the map showing any such line or lines.

Source: S. L. 1929, ch. 177, § 24; R. C. 1943, § 40-4835; S. L. 1967, ch. 323, § 214.

40-48-36. Protest against resolution as a taking of property.—Regulations governing.—If any owner of property lying within any lines for the proposed opening and widening, or the opening and widening of any street, or between any future street line and the nearest public highway, shall claim that the adoption of any resolution or ordinance or the refusal to issue a building permit to him or the prohibition of building or construction by him shall constitute a taking of his property by the municipality, said owner, within three months after the recording in the office of the appropriate register of deeds of the notice provided in section 40-48-35, may file with the governing body a protest against the alleged taking of his property and a demand, that the municipality adopting such resolution either vacate the same as to the property of such owner, or compensate him therefor, or commence the condemnation thereof within three months after the filing of his written protest and claim. If the municipality shall fail to vacate such resolution as to the property of the protesting owner, or to compensate him for the right to construct any building, fence, or other structure, or to commence proceedings for the condemnation thereof within three months after the receipt of such written protest and demand, such resolution shall be vacated automatically and annulled as to the property of such protesting owner.

Source: S. L. 1929, ch. 177, § 24; R. C. 1943, § 40-4836.

40-48-37. Failure to file claim is waiver.—Any owner of property lying within any of the lines set forth or described as future street lines in any resolution adopted as provided for in this chapter who shall fail, within the time specified, to file a protest and claim shall be deemed conclusively to have waived any such claim, but he shall not be deemed to have waived any title to the property within any such future street line or lines or any interest therein other than the right to erect or construct thereon any building, fence, or other structure.

Source: S. L. 1929, ch. 177, § 24; R. C. 1943, § 40-4837.

40-48-38. Penalty for violations.—A violation of any of the provisions of this chapter shall be punishable as a misdemeanor.

CHAPTER 40-50

PLATTING TOWNSITES AND CORRECTION AND VACATION OF PLATS

Section		Section	
40-50-01	Laying out townsites, additions, and subdivisions — Survey and plat required — Contents of plat.	40-50-02	Lots and blocks numbered.
		40-50-03	Base line formed by stones placed in ground.
Section		Section	
40-50-04	Certifying and recording of plat or map.	40-50-16	Completed plat filed with city auditor — Notice of completed plat published.
40-50-05	Conveyance of land by noting or marking map or plat— Considered general warranty —Land for public use.	40-50-17	Governing body may order resurveys to determine merits of objections.
40-50-06	Recording plat or map in un-organized county.	40-50-18	Acceptance or rejection of corrected plat—Recording— Blueprint filed in auditor's office — Effect of corrected plat.
40-50-07	Fees of surveyor and register of deeds — Plat and survey copied into book.	40-50-19	Assessment of costs of new plat—Publication of assessments—Approval of assessments.
40-50-08	Penalty if register of deeds files or records a plat without approval of planning commission.	40-50-20	Vacation of plats before sale of lots—Where lots sold— Effect.
40-50-09	Disposing of, offering for sale, or leasing any lot before compliance with chapter—Penalty.	40-50-21	District court may alter or vacate townsite upon petition of proprietors.
40-50-10	Penalty if officer or other persons neglect to do duty.	40-50-22	Application to alter or vacate a townsite—Publication.
40-50-11	Collection and payment of forfeitures and liabilities.	40-50-23	Vacation or alteration of townsite by court—Proceedings recorded by clerk.
40-50-12	Correction of plats—Declaration of necessity by resolution—Publication.	40-50-24	Part of a plat may be vacated.
40-50-13	Resolution declaring necessity for correcting plat — Contents.	40-50-25	Right of proprietors when part of a plat is vacated.
40-50-14	Governing body to order work done after hearing objections.	40-50-26	Register of deeds to mark vacated plat.
40-50-15	Regulations governing engineer in correcting plat or in replatting — Affidavit and certification.	40-50-27	Owner of lots may replat.

40-50-01. Laying out townsites, additions, and subdivisions—Survey and plat required—Contents of plat.—Any person desiring to lay out a townsite in this state, or an addition thereto, or a subdivision of outlots therein, shall cause the same to be surveyed and a plat thereof made. Such plat shall describe particularly and set forth all the streets, alleys, and public grounds, and all outlots or fractional lots within or adjoining the townsite or municipality, together with the names, width, courses, boundaries, and extent of all such streets, alleys, and public grounds.

Source: Pol. C. 1877, ch. 26, § 1; R. C. 1895, § 2418; R. C. 1899, § 2418; R. C. 1905, § 2926; C. L. 1913, § 3942; R. C. 1943, § 40-5001.

Cross-Reference.

Requirements for copies of plats and plans, see §§ 11-24-02 to 11-24-07.

40-50-02. Lots and blocks numbered.—All lots, however designated, shall be numbered in progressive numbers or by blocks in which they are situated, and their precise length and width shall be stated on the

map or plat. The streets, alleys, or roads which divide or border the lots also shall be shown on the map or plat.

Source: S. L. 1877, ch. 106, § 1; R. C. 1905, § 2927; C. L. 1913, § 3943; R. C. 1895, § 2419; R. C. 1899, § 2419; R. C. 1943, § 40-5002.

40-50-03. Base line formed by stones placed in ground.—At the time of surveying and laying out a townsite, addition, or subdivision of outlots, the proprietor of the townsite, either personally or by his agent, shall plant and fix firmly in the ground on the line of the main streets of the townsite, addition, or subdivision two good and sufficient stones of such size and dimension as the surveyor shall direct. The stones shall be at least two hundred fifty yards apart, and the point or points where the same may be found shall be designated on the plat or map. The line thus formed shall be a base line from which to make future surveys.

Source: Pol. C. 1877, ch. 26, § 3; R. C. 1905, § 2928; C. L. 1913, § 3944; R. C. 1895, § 2420; R. C. 1899, § 2420; R. C. 1943, § 40-5003.

40-50-04. Certifying and recording of plat or map.—After the plat or map has been completed, it shall be certified by the surveyor and the officers, if it is correct. No plat shall be recorded until it is approved by the engineer of the municipality affected by the plat, or if there is no such municipal engineer, by the governing body of such municipality. Every person whose duty it is to comply with the provisions of this chapter, before the plat or map is offered for record, shall acknowledge the same before a person authorized to take acknowledgments. A certificate of the acknowledgment shall be endorsed on the plat or map by the officer taking the same, and such certificate of survey and acknowledgment shall be recorded and shall form a part of the record.

Source: Pol. C. 1877, ch. 26, § 4; R. C. 1915, ch. 74, § 1; 1925 Supp., § 3945; R. 1895, § 2421; R. C. 1899, § 2421; R. C. C. 1943, § 40-5004; S. L. 1963, ch. 299, 1905, § 2929; C. L. 1913, § 3945; S. L. § 1.

40-50-05. Conveyance of land by noting or marking map or plat—Considered general warranty.—Land for public use.—When the plat shall have been made out and certified, acknowledged, and recorded as required by this chapter, every donation or grant to the public, or to any individual, religious society, or corporation, marked or noted as such on said plat or map shall be a sufficient conveyance to vest the fee simple title in and to such parcel or parcels of land as are designated therein. The mark or note made on such plat or map shall be considered to all intents and purposes a general warranty against the donors, their heirs and representatives, to the donees or grantees for the expressed and intended uses and purposes therein named and for no other use or purpose whatever. The land intended to be used for the streets, alleys, ways, or other public uses in any municipality or addition thereto shall be held in the corporate name of the municipality in trust for the uses and purposes set forth and expressed and intended.

Source: Pol. C. 1877, ch. 26, § 5; R. C. 1905, § 2930; C. L. 1913, § 3946; R. C. 1895, § 2422; R. C. 1899, § 2422; R. C. 1943, § 40-5005.

Acceptance of Dedication.

A statutory dedication is in the nature of a grant and does not become effective until accepted by the grantee. *Ramstad v. Carr*, 31 ND 504, 154 NW 195.

The question of whether there has been an acceptance depends primarily upon whether there has been an intent to accept the offer to dedicate and acceptance may be express or implied and need not be by any formal act unless provided by statute. *Ramstad v. Carr*, 31 ND 504, 154 NW 195; *City of Grand Forks v. Flom*, 79 ND 289, 56 NW 2d 324.

A plat owner's dedication of streets and alleys is not complete until the public accepts the dedication and where the plat has not been incorporated within a municipality and there has been no use or improvement of the streets and alleys, the public has not accepted. *Hille v. Nill*, 58 ND 536, 226 NW 635, distinguished in 79 ND 289, 56 NW 2d 324.

Dedication to Public Use.

By the platting, dedication and acceptance of a street, a city acquired the right to use the land so dedicated for street purposes; the fee to the center of the street remains in the abutting owner or owners. *Donovan v. Allert*, 11 ND 289, 91 NW 441, 58 LRA 775; *Gram Constr. Co. v. Minneapolis, St. P. & S. M. Ry. Co.*, 36 ND 164, 161 NW 732; *Casey v. Corvin*, 71 NW 2d 553; *Murphy v. City of Bismarck*, 109 NW 2d 635; *Dacotah Hotel Co. v. City of Grand Forks*, 111 NW 2d 513.

The statutes prescribing the method of dedicating real property to public uses are not exclusive of the common-law method of dedication, and do not abro-

gate the well-settled rule of implied dedication by estoppel in pais. *Cole v. Minnesota Loan & Trust Co.*, 17 ND 409, 117 NW 354.

A city has the power to use, and control the use of, the entire area of a street for the benefit of the public in accordance with the powers vested in the city by statute. *Kennedy v. City of Fargo*, 40 ND 475, 169 NW 424; *City of Jamestown v. Miemietz*, 95 NW 2d 597; *Dacotah Hotel Co. v. City of Grand Forks*, 111 NW 2d 513.

The title to streets and alleys is held by the municipality in trust for the public, not in a proprietary capacity, and a municipality is without power to alienate the same, regardless of whether the corporation owns the fee or has merely an easement and it holds as trustee for the public. *City of Jamestown v. Miemietz*, 95 NW 2d 597.

Withdrawal of Dedication.

Where there is a dedication made by the statutory method of filing a plat, and a sale of lots by the owner with reference thereto, it can be withdrawn only by a vacation of the plat under the statute. *Ramstad v. Carr*, 31 ND 504, 154 NW 195, distinguished in 79 NW 2d 155; *City of Grand Forks v. Flom*, 79 ND 289, 56 NW 2d 324; *City of Jamestown v. Miemietz*, 95 NW 2d 597.

The purchaser of a lot within the regularly platted portion of an incorporated city accepted its status as city property and could not change its classification by his usage except by vacation of that portion of the city plat where his property was located. *Eizenzimmer v. Bell*, 75 ND 733, 32 NW 2d 891, distinguished in 135 NW 2d 597.

40-50-06. Recording plat or map in unorganized county.—If the county in which the townsite or addition is situated is unorganized, the plat or map shall be recorded in the office of the register of deeds of the county to which such unorganized county is attached at the time for judicial purposes.

Source: Pol. C. 1877, ch. 26, § 6; R. C. 1905, § 2931; C. L. 1913, § 3947; R. C. 1895, § 2423; R. C. 1899, § 2423; R. C. 1943, § 40-5006.

40-50-07. Fees of surveyor and register of deeds.—Plat and survey copied into book.—Unless otherwise agreed, the surveyor who lays out, surveys, and plats any townsite or addition shall receive twenty-five cents for each lot contained therein. The register of deeds for record-

ing a map or plat shall receive the sum of two cents for each lot contained in the townsite or addition, and he shall transcribe or copy the plat and survey into a book kept for that purpose.

Source: Pol. C. 1877, ch. 26, § 8; R. C. 1905, § 2933; C. L. 1913, § 3949; R. C. 1895, § 2425; R. C. 1899, § 2425; R. C. 1943, § 40-5007.

40-50-08. Penalty if register of deeds files or records a plat without approval of planning commission.—A register of deeds who shall receive for filing, or who shall record a plat of a subdivision without the approval of the planning commission, if a planning commission has been appointed in the municipality in which the subdivision is located or to which it is attached, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than five hundred dollars.

Source: S. L. 1929, ch. 177, § 19; R. C. 1943, § 40-5008.

40-50-09. Disposing of, offering for sale, or leasing any lot before compliance with chapter.—Penalty.—Any person or persons who shall dispose of, offer for sale, or lease any lot in any municipality or in any addition to any municipality or to any part thereof before complying with the requirements of this chapter shall forfeit and pay the sum of ten dollars for each lot or part of a lot sold or disposed of, leased, or offered for sale.

Source: Pol. C. 1877, ch. 26, § 9; R. C. 1905, § 2934; C. L. 1913, § 3950; R. C. 1895, § 2426; R. C. 1899, § 2426; R. C. 1943, § 40-5009.

40-50-10. Penalty if officer or other persons neglect to do duty.—If any officer or person whose duty it is to comply with any of the requirements of this chapter shall neglect or refuse so to do, he shall forfeit and pay a sum not less than ten dollars nor more than one hundred dollars for each month he shall delay a compliance.

Source: Pol. C. 1877, ch. 26, § 10; R. C. 1905, § 2935; C. L. 1913, § 3951; R. C. 1895, § 2427; R. C. 1899, § 2427; R. C. 1943, § 40-5010.

40-50-11. Collection and payment of forfeitures and liabilities.—All forfeitures which may be incurred or which arise under this chapter shall be prosecuted for and recovered in the name of the county treasurer. Any officer paying over any money received under any of the provisions of this chapter to the county treasurer shall take his receipt therefor and forthwith shall file such receipt with the county auditor, who shall charge the amount of such receipt against the treasurer on the books of the county.

Source: Pol. C. 1877, ch. 26, § 12; R. C. 1905, § 2936; C. L. 1913, § 3952; R. C. 1895, § 2428; R. C. 1899, § 2428; R. C. 1943, § 40-5011.

40-50-12. Correction of plats.—Declaration of necessity by resolution.—Publication.—If any platted addition, outlet, or parcel of ground, or any subdivision of the same within the corporate limits of any municipi-

pality, is found to be inadequately or erroneously described in the plat, or if the plat is in error or is deficient as to marked or scaled distances, angles, or descriptions, or has other defects which make it incorrect or deficient, the governing body of the municipality, by resolution, may declare it necessary to correct the plat or plats or to replat the property. In that case, such resolution shall be published in the official newspaper of the municipality once each week for three consecutive weeks.

Source: S. L. 1911, ch. 289; C. L. 1913, § 3967; S. L. 1921, ch. 33, § 1; 1925 Supp., § 3967; R. C. 1943, § 40-5012.

40-50-13. Resolution declaring necessity for correcting plat — Contents.—The resolution mentioned in section 40-50-12 shall set forth:

1. The description of the property affected;
2. The nature of the errors or defects;
3. An outline of the proposed corrections;
4. An estimate of the probable cost of having the corrections made by the engineer of the municipality or by some other competent engineer or surveyor designated for that purpose;
5. Notice that any interested owner may file objections to the proposed work or to the cost thereof and that such objections will be heard and considered at a meeting designated for that purpose; and
6. The time when the governing body will meet to consider all the objections.

Source: S. L. 1911, ch. 289; C. L. 1913, § 3967; S. L. 1921, ch. 33, § 1; 1925 Supp., § 3967; R. C. 1943, § 40-5013.

40-50-14. Governing body to order work done after hearing objections.—After all the objections filed at or prior to the meeting have been heard and considered, the governing body of the municipality, if it deems the work advisable and if the owners of the majority of the property affected have not filed a protest against the same, shall order the municipal engineer, or such other competent engineer or surveyor as shall have been designated in the resolution declaring the work necessary, to do the work in accordance with the resolution.

Source: S. L. 1911, ch. 289; C. L. 1913, § 3967; S. L. 1921, ch. 33, § 1; 1925 Supp., § 3967; R. C. 1943, § 40-5014.

40-50-15. Regulations governing engineer in correcting plat or in replatting—Affidavit and certification.—The engineer or surveyor designated to make the correction or to do the replatting shall follow the original hubs, stakes, monuments, and lines, and, to the best of his ability, by actual survey and measurements on the ground, shall make the plat conform to the divisions, subdivisions, blocks, lots, outlots, pieces, and parcels of land as originally laid out. All lost or disputed

points, lines, and angles shall be determined by actual survey and made to conform with the original survey and shall be marked on the ground in a manner customary and as is provided in this chapter. All numbers, letterings, and names of references to blocks, lots, outlots, additions, streets, avenues, and alleys, shall be the same as on the original plat, and the revised and corrected plat shall be a true plat of the survey as made originally. The surveyor shall make his affidavit and certificate that the plat has been made to the best of his ability and shall affix the affidavit and certificate to the plat.

Source: S. L. 1911, ch. 289; C. L. 1913, § 3967; S. L. 1921, ch. 33, § 1; 1925 Supp., § 3967; R. C. 1943, § 40-5015.

40-50-16. Completed plat filed with city auditor—Notice of completed plat published.—The completed plat shall be filed with the city auditor who shall publish a notice of the filing thereof once each week for three consecutive weeks. Such notice shall stipulate that all interested parties may view the plat and shall set forth a date when the governing body of the municipality will meet to hear and consider objections to the survey as made.

Source: S. L. 1911, ch. 289; C. L. 1913, § 3967; S. L. 1921, ch. 33, § 1; 1925 Supp., § 3967; R. C. 1943, § 40-5016; S. L. 1967, ch. 323, § 222.

40-50-17. Governing body may order resurveys to determine merits of objections.—If the governing body of the municipality, after hearing objections to the corrected plat, is of the opinion that an injustice has been done, it shall order such surveys and resurveys as it may deem necessary to determine the merit of any claim or objection. It may adjourn the hearing from time to time or until such time as the necessary information is available.

Source: S. L. 1911, ch. 289; C. L. 1913, § 3967; S. L. 1921, ch. 33, § 1; 1925 Supp., § 3967; R. C. 1943, § 40-5017.

40-50-18. Acceptance or rejection of corrected plat—Recording—Blueprint filed in auditor's office—Effect of corrected plat.—After completing the hearing thereon, the governing body shall affirm or reject the corrected plat by resolution. If the plat is affirmed by the affirmative vote of two-thirds of the members of the governing body, it shall be recorded in the office of the register of deeds and a blueprint of the plat shall be filed in the office of the county auditor. The plat so recorded and filed shall be the true and correct plat of the property described and shall supersede all previous plats.

Source: S. L. 1911, ch. 289; C. L. 1913, § 3967; S. L. 1921, ch. 33, § 1; 1925 Supp., § 3967; R. C. 1943, § 40-5018.

40-50-19. Assessment of costs of new plat—Publication of assessments—Approval of assessments.—The municipal or other competent

engineer making the corrected plat shall assess all cost of making such plat against the property benefited proportionately to the benefits received. The assessments shall be published in full by the city auditor in the official newspaper of the municipality and shall be subject to the approval of the governing body of the municipality after due consideration and hearing of any and all objections at a meeting designated for that purpose in the notice and publication of the assessment. Such assessments, when approved by the governing body, shall be certified to the county auditor and shall be payable in one installment.

Source: S. L. 1911, ch. 289; C. L. 1913, Supp., § 3967; R. C. 1943, § 40-5019; S. § 3967; S. L. 1921, ch. 33, § 1; 1925 L. 1967, ch. 323, § 223.

40-50-20. Vacation of plats before sale of lots—Where lots sold—Effect.—Before the sale of lots therein, a plat of any municipality, or of any addition thereto, or a subdivision of land, may be vacated by the proprietors by a written instrument declaring the plat to be vacated. Such instrument shall be executed, acknowledged or proved, and recorded in the office in which the plat to be vacated is recorded. The execution and recording of such instrument shall destroy the force and effect of the recording of the plat which is so vacated and shall divest all public rights in the streets, alleys, and public grounds laid out as described in the plat. In cases where lots have been sold, a plat may be vacated by all the owners of the lots in the plat joining in the execution of the instrument declaring the vacation.

Source: S. L. 1887, ch. 109, § 1; R. C. 1895, § 2432; R. C. 1899, § 2432; R. C. 1905, § 2940; C. L. 1913, § 3962; R. C. 1943, § 40-5020.

Compliance with Statute Mandatory.

Where there is a dedication made by the statutory method of filing a plat, and a sale of lots by the owner with reference thereto, it can be withdrawn only by a vacation of the plat under the statute. *Ramstad v. Carr*, 31 ND 504, 154 NW 195, distinguished in 79 NW 2d 155; *City of Grand Forks v. Flom*, 79 ND 289, 56 NW 2d 324; *City of Jamestown v. Niemietz*, 95 NW 2d 897.

Duty of Other Lot Owners.

Where the proprietor of a portion of a plat vacates it, the owner of other lots must act to vindicate the rights abridged or destroyed thereby within the prescriptive period. *Hille v. Nill*, 58 ND 536, 226 NW 635.

Error in Declaration of Vacation.

An erroneous statement in a proprietor's declaration of vacation of a plat that he owns all of the plat does not invalidate the vacation as to the part which he in fact owns. *Hille v. Nill*, 58 ND 536, 226 NW 635.

40-50-21. District court may alter or vacate townsite upon petition of proprietors.—Upon application made by the proprietors of any townsite, the district court in and for the county may alter or vacate the townsite or any part thereof.

Source: Pol. C. 1877, ch. 26, § 13; R. C. 1905, § 2937; C. L. 1913, § 3959; R. C. 1895, § 2429; R. C. 1899, § 2429; R. C. 1943, § 40-5021.

40-50-22. Application to alter or vacate a townsite—Publication.—Any proprietor of a townsite who is desirous of altering or vacating the same or any part thereof shall give notice of the intended applica-

tion by publishing written notice thereof in the official county newspaper once in each week for at least forty days prior to the sitting of the court to which the proprietor intends to make the application.

Source: Pol. C. 1877, ch. 26, § 14; R. C. 1905, § 2938; C. L. 1913, § 3960; R. C. 1895, § 2430; R. C. 1899, § 2430; R. C. 1943, § 40-5022; S. L. 1967, ch. 323, § 224.

40-50-23. Vacation or alteration of townsite by court.—Proceedings recorded by clerk.—If the applicant produces satisfactory evidence to the court that the notice required by section 40-50-22 has been given, the court shall proceed to hear and determine the petition and may alter or vacate the townsite or any part thereof and order the proceedings thereon to be recorded by the clerk in the records of the court. A certified copy of the order may be recorded in the office of the register of deeds.

Source: Pol. C. 1877, ch. 26, § 15; R. C. 1905, § 2939; C. L. 1913, § 3961; R. C. 1895, § 2431; R. C. 1899, § 2431; R. C. 1943, § 40-5023.

40-50-24. Part of a plat may be vacated.—Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter if the vacating does not abridge or destroy any of the rights and privileges of other proprietors in the plat. This chapter shall not authorize the closing or obstructing of any public highways laid out according to law.

Source: S. L. 1887, ch. 109, § 2; R. C. 1895, § 2433; R. C. 1899, § 2433; R. C. 1905, § 2941; C. L. 1913, § 3963; R. C. 1943, § 40-5024.

Rights of City.

Where a city has improved streets and

alleys and has done other acts of a public nature within part of a plat attempted to be vacated, the city has acquired rights of which it cannot be deprived, at least without its consent. *City of LaMoore v. Lasell*, 26 ND 638, 145 NW 577.

40-50-25. Right of proprietors when part of a plat is vacated.—If a part of a plat is vacated, the proprietors of the lots vacated may inclose the streets, alleys, and public grounds adjoining said lots in equal proportion.

Source: S. L. 1887, ch. 109, § 3; R. C. 1905, § 2942; C. L. 1913, § 3964; R. C. 1895, § 2434; R. C. 1899, § 2434; R. C. 1943, § 40-5025.

40-50-26. Register of deeds to mark vacated plat.—The register of deeds shall write in plain, legible letters across that part of a plat which has been vacated the word "vacated" and also shall make a reference on the plat to the volume and page in which the instrument of vacation is recorded.

Source: S. L. 1887, ch. 109, § 4; R. C. 1905, § 2943; C. L. 1913, § 3965; R. C. 1895, § 2435; R. C. 1899, § 2435; R. C. 1943, § 40-5026.

40-50-27. Owner of lots may replat.—The owner of lots in a vacated plat may cause the lots and a proportionate part of the adjacent streets and public grounds to be platted and numbered by the county surveyor, and when such plat is acknowledged by the owner and recorded in the office of the register of deeds, such lots may be conveyed and assessed by the numbers given them on the plat.

Source: S. L. 1887, ch. 109, § 5; R. C. 1905, § 2944; C. L. 1913, § 3966; R. C. 1895, § 2436; R. C. 1899, § 2436; R. C. 1943, § 40-5027.

CHAPTER 4-22

SOIL CONSERVATION DISTRICTS LAW

Section 4-22-01	Policy and scope of chapter.	Section 4-22-02	Definitions.
Section 4-22-03	State soil conservation committee — Members — Compensation — Records and seal.	Section 4-22-21	Regular election of district— When held — Regulations governing.
4-22-04	Committee — Designation of chairman — Quorum — Provision for surety bonds and annual audit.	4-22-22	Supervisors—Terms of office— Vacancies—Removal.
4-22-05	Employees — Legal services — Offices — State departments to co-operate with committee.	4-22-22.1	Additional soil conservation district supervisors.
4-22-06	Duties and powers generally.	4-22-23	Supervisors may employ assistants—Attorney general and state's attorneys to advise—Reports to committee.
4-22-07	Committee to make rules governing notices, hearings, and referenda.	4-22-23.1	Clerical help for district supervisors.
4-22-08	Districts — Petition — Contents—More than one petition filed.	4-22-24	Supervisors to provide for surety bonds, keeping records, and annual audit.
4-22-09	Hearings on petitions—When held — Notice — Determinations.	4-22-25	Supervisors may consult representatives of county or municipality.
4-22-10	Referendum—When held— Contents of ballot—Who may vote.	4-22-26	Powers and duties of districts and supervisors.
4-22-11	Publication of referendum results — Determination of practicability of operation of district.	4-22-27	Supervisors may formulate land-use regulations for submission to land occupiers.
4-22-12	District determined practicable—Statement filed with secretary of state.	4-22-28	Notice of referendum—Form of ballot on referendum— Conduct of election—Who may vote.
4-22-13	District to be subdivision of state — Boundaries of district.	4-22-29	Majority required to adopt ordinance — Effect of ordinance after adoption.
4-22-14	Petition to include additional territory within existing district.	4-22-30	What may be contained in land-use regulations.
4-22-15	Districts presumed to be organized legally — Copy of certificates as evidence.	4-22-31	Regulations to be uniform— Copies furnished in district.
4-22-16	Notice to file nominating petitions and of election of district supervisors.	4-22-32	Amending, supplementing, or repealing land-use regulations.
4-22-17	Nominating petitions — Petitioners required—Final filing date.	4-22-33	Supervisors to enforce land-use regulations.
4-22-18	Election of supervisors—Payment of expenses—Regulation of elections—Eligibility of voters—Ballots.	4-22-34	Failure to perform land-use regulations—Hearing on— Supervisors to perform— Costs and expenses.
4-22-19	Election board — Appointment — Oath — Canvass of election.	4-22-35	Board of adjustment—Members — Appointment — Vacancies—Compensation.
4-22-20	Committee to canvass returns and issue certificates of election.	4-22-36	Board of adjustment—Rules— Chairman — Meetings — Quorum—Records.
		4-22-37	Petition to board of adjustment to vary land-use regulations — Service — Hearing—Board's powers.
		4-22-38	Taking of testimony at hearing.

Section 4-22-39	Aggrieved petitioner and supervisors may appeal to district court from order of board—Procedure.	Section 4-22-46	Petitions for discontinuance of district—Limitation on filing.
4-22-40	Co-operation between district supervisors.	4-22-47	Consolidation of districts—Petition — Referendum — Conduct of referendum.
4-22-41	State agencies to cooperate with district supervisors.	4-22-48	Conduct of referendum—Canvass of votes.
4-22-42	Discontinuance of districts—Petition — Referendum — Eligible voters.	4-22-49	Supervisors of consolidated district—Terms of office—Powers and duties.
4-22-43	Duties of committee after referendum on discontinuance of the district has been held.	4-22-50	Costs and expenses of consolidation—Disposition of property—Contracts of districts after consolidation.
4-22-44	Termination of affairs of district—Disposal of property —Certificate of dissolution.	4-22-51	Soil conservation trust lands.
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Part V—Soil Conservation

CHAPTER 4-22—SOIL CONSERVATION DISTRICTS LAW

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Section 4-22-02	Definitions.	Section 4-22-23.1	Assistance for district supervisors.
4-22-03	State soil conservation committee—Elective and appointive members—Records and seal.	4-22-26	Powers and duties of districts and supervisors.
4-22-04	Committee — Chairman — Quorum — Compensation — Provision for surety bonds and annual audit.	4-22-27	Supervisors may formulate land-use regulations for submission to qualified electors.
4-22-06	Duties and powers generally.	4-22-28	Notice of referendum—Form of ballot on referendum—Conduct of election—Who may vote.
4-22-08	Districts — Petition — Contents—More than one petition filed.	4-22-29	Majority required to adopt ordinance—Effect of ordinance after adoption.
4-22-09	Hearings on petitions—When held — Notice — Determinations.	4-22-31	Regulations to be uniform — Copies furnished in district.
4-22-10	Referendum — When Held — Contents of ballot — Who may vote.	4-22-32	Amending, supplementing, or repealing land-use regulations.
4-22-11	Publication of referendum results — Determination of practicability of operation of district.	4-22-37	Petition to board of adjustment to vary land-use regulations — Service — Hearing — Board's powers.
4-22-14	Petition to include additional territory within existing district.	4-22-42	Discontinuance of districts — Petition — Referendum — Eligible voters.
4-22-16	Notice to file nominating petitions and of election of district supervisors.	4-22-43	Duties of committee after referendum on discontinuance of the district has been held.
4-22-17	Nominating petitions—Petitions required—Final filing date.	4-22-44	Termination of affairs of district — Disposal of property — Certificate of dissolution.
4-22-21	Regular election of district — When held — Regulations governing.	4-22-47	Consolidation of districts—Petition — Referendum — Conduct of referendum.
4-22-22	Supervisors—Terms of office—Vacancies — Removal — Expenses.		

CHAPTER 11-28.1—COUNTY SPECIAL SERVICE DISTRICTS

Section		Section	
11-28.1-01	Board of county park commissioners may establish service districts.	11-28.1-10	Publication of notice of confirmation of assessment list and meeting for action upon assessments.
11-28.1-02	Plans and specifications required—Approval.	11-28.1-11	Aggrieved person may file notice of appeal.
11-28.1-03	Hearing—Notice.	11-28.1-12	Board of county commissioners to hear and determine appeals and objections to assessments—Altering assessments—Limitations.
11-28.1-04	Protest against establishing service district—Hearing to determine sufficiency—When protest a bar to proceeding.	11-28.1-13	Confirmation of assessment list by governing body—Certifying list—Filing.
11-28.1-05	Assessment of expenses.	11-28.1-14	Use of collections of assessments.
11-28.1-06	Assessment list to be prepared—Contents—Certificate attached to assessment list.	11-28.1-15	Board of county park commissioners may contract—Contents.
11-28.1-07	Publication of assessment list and notice of hearing of objections to list.	11-28.1-16	Service assessment funds and the disbursements thereof.
11-28.1-08	Alteration of assessments at hearing—Limitations.		
11-28.1-09	Confirmation of assessment list after hearing—Filing list.		

11-28.1-01. Board of county park commissioners may establish service districts.—For the purpose of providing police protection and garbage removal services and defraying the cost thereof, any board of county park commissioners may create police protection and garbage removal service districts, and may extend any such district when necessary. The appropriate police protection or garbage removal district shall be created by resolution. The district shall be designated by a name appropriate to the type of service provided for which it was created, and by a number distinguishing it from other service districts. A police protection or garbage removal district may be composed in part or entirely of or include real property which is not otherwise under the jurisdiction of the board of county park commissioners, but which is contiguous to real property under the jurisdiction of the park commissioners and directly benefited by the proposed police protection and garbage removal. The county park commissioners may provide garbage collection services in such district as designated in the resolution, and may designate police officers who shall have police powers for the enforcement of the laws of this state within such district, such police authority to be executed concurrently with other law enforcement officers having jurisdiction over such area.

Source: S. L. 1967, ch. 104, § 1.

*Only § 11-28.1-01 is reproduced.

CHAPTER 11-33.1—RURAL SUBDIVISION IMPROVEMENT

Section	Section
11-33.1-01 Petition for improvements— Levy of special assessments.	11-33.1-02 Resolution for improvements —Notice and hearing.

11-33.1-01. Petition for improvements—Levy of special assessments.—The county commissioners of any county in North Dakota, upon receipt of a petition bearing signatures of sixty percent of the affected and benefited property owners, in a rural, platted, zoned and recorded subdivision with restrictive covenants, and situated outside the corporate limits of any city in North Dakota, may install such improvements as road or street identification markers, road or street lights, and asphalt paving; such improvements to be billed back to the individual benefited property owners on an equal per lot basis in the form of a special assessment on the individual annual general property tax statement. Payments for special assessments levied in accordance with this section shall not exceed a period of five years and said special assessments shall constitute a lien on the affected and benefited property until paid. The special assessment provided in this section shall bear interest at the rate not to exceed seven percent per annum from the date of the entry by the county treasurer, and the collection thereof may be made and enforced as delinquent taxes are enforced against real property.

Source: S. L. 1971, ch. 133, § 1.

11-33.1-02. Resolution for improvements—Notice and hearing.—Upon the filing of the petition by sixty percent of the affected and benefited property owners the county commission may declare by resolution, the boundaries of the area to be affected and benefited and the said petition must bear signatures of sixty percent of the property owners in the area so affected and benefited. The county commissioners' resolution shall specify the improvements to be made and the estimated cost thereof. Within ten days after the passing of such a resolution, notice, by mail, shall be given by the county auditor to each of the property owners affected and benefited, said notice to provide a hearing on said resolution within thirty days of the date of mailing said notice. At the conclusion of the hearing so called, the county commissioners shall affirm, modify or vacate the previous resolution.

Source: S. L. 1971, ch. 133, § 2.

IMPROVEMENTS BY SPECIAL ASSESSMENT METHOD*

Subject	Section
40-22-01 Power of municipalities to defray expense of improvements by special assessments.	40-22-06.1 Cities with a population of over ten thousand enter into agreement with highway department or county for certain improvements—Repealed.
40-22-02 Sewerage system—Establishment, maintenance, and alteration—Vote required.	40-22-07 Dispensing with preliminary requirements in making improvements in conjunction with highway department or county—Repealed.
40-22-03 Acquiring property for sewers, water mains and water supply beyond corporate limits.	40-22-08 Improvement districts to be created.
40-22-04 Discharge of sewage—Regulations governing.	40-22-09 Size and form of improvement districts—Regulations governing.
40-22-05 Condemnation of land and rights of way for special improvements—Taking of possession—Trial—Appeal—Vacation of judgment.	40-22-10 Plans and specifications required—Contents.
40-22-06 Municipality may enter into agreement with highway department or county for certain improvements.	40-22-11 Approval of plans, specifications, and estimates—Approval establishes grade of street.
40-22-12 Requirements of plans, specifications, and estimates when improvement is paving or beautification of streets.	40-22-20 Engineer's statement of estimated cost required—Governing body to enter into contracts.
40-22-13 Municipal engineer to retain copy of plans, specifications, and estimates—Sale of copies.	40-22-30 Contractor's bond—Execution—Affidavit required.
40-22-14 Plans, specifications, and estimates filed in office of city auditor.	40-22-31 Conditions of contractor's bond.
40-22-15 Resolution declaring improvements necessary—Exception for sewer and water mains—Contents of resolution.	40-22-32 Approval of bonds—Return of bidder's bond.
40-22-16 Sewer or water improvements and parking lots in municipalities may be paid for by service charges.	40-22-33 Failure to execute contractor's bond.
40-22-17 Protest against resolution of necessity—Meeting to hear protest.	40-22-34 Insufficiency of bonds—New bonds required—Failure to furnish.
40-22-18 Protest bar to proceeding—Invalid or insufficient protests.	40-22-35 Execution and filing of contract.
40-22-19 Call for bids—Contents—Advertising.	40-22-36 Contracts—Conditions and terms.
40-22-20 Bid to be accompanied by a bond or certified check—Check retained upon failure of bidder to contract.	40-22-37 Contractor may be paid during progress of work.
40-22-21 Bidder's bond—Required—Amount.	40-22-38 Application of chapter to waterworks and water mains—Acquisition of waterworks, sewage treatment and disposal plants and sewer systems.
40-22-22 Execution of bidder's bond—Affidavit required.	40-22-39 Abbreviations, letters, or figures may be used in proceedings for levy and collection of special assessments.
40-22-23 Conditions of bidder's bond.	40-22-40 City auditor to keep complete record of improvements—Record as evidence.
40-22-24 Bids—Filing—Sealing—Endorsing—Opening—Considering.	40-22-41 Validation—Repealed.
40-22-25 Opening of bids—Bids to be entered on minutes—Final action on bids to be deferred.	40-22-42 Confirmation of certain proceedings for city and village improvements—Repealed.
40-22-26 Petition by property owners to have paving of certain material—Contents.	40-22-43 Defects and irregularities in improvement proceedings are not fatal.
40-22-27 Rejection of bids—Advertising for bids or construction by municipality without contract.	40-22-44 Discontinuance of municipal parking lots.
40-22-28 Determination of kind of paving after bids are considered.	40-22-45 Equalization of original assessment.
	40-22-46 Payment of outstanding warrants—Deficits of surplus in general fund—General fund liable for any outstanding warrants.

CHAPTER 40-22—IMPROVEMENT BY SPECIAL ASSESSMENT METHOD *

1973 SUPPLEMENT

Section		Section	
40-22-01	Power of municipalities to defray expense of improvements by special assessments.	40-22-18	Protest bar to proceeding — Invalid or insufficient protests — Payment of costs — Tax levy.
40-22-01.1	Restoration of certain property damaged in flood control — Special assessments for costs.	40-22-19	Call for bids — Contents — Advertising.
40-22-09	Size and form of improvement districts — Regulations governing.	40-22-20	Bid to be accompanied by a bond — Bond retained upon failure of bidder to contract — Amount of bond.
40-22-10	Engineer's report required — Contents.	40-22-24	Bids — Filing — Sealing — Endorsing — Opening — Considering.
40-22-11	Approval of plans, specifications, and estimates — Approval establishes grade of street.	40-22-35	Execution and filing of contract.
40-22-15	Resolution declaring improvements necessary — Exception for sewer and water mains — Contents of resolution.	40-22-36	Contracts — Conditions and terms.
		40-22-37	Contractor shall be paid during progress of work — Retainage—Failure to pay — Rate of interest.

*Only §§ 40-22-01, 40-22-05, 40-22-06, 40-22-08, and 40-22-09 are reproduced

40-22-01. Power of municipalities to defray expense of improvements by special assessments.—Any municipality, upon complying with the provisions of this chapter, may defray the expense of any or all of the following types of improvements by special assessments:

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1. The construction of a water supply system, or a sewerage system, or both, or any part thereof, or any improvement thereto or extension or replacement thereof, including the construction and erection of wells, intakes, pumping stations, settling basins, filtration plants, standpipes, water towers, reservoirs, water mains, sanitary and storm sewer mains and outlets, facilities for the treatment and disposal of sewage and other municipal, industrial and domestic wastes, and all other appurtenances, contrivances and structures used or useful for a complete water supply and sewerage system;
2. The improvement of the municipal street system and any part thereof, including any one or more of the processes of acquisition, opening, widening, grading, graveling, paving, repaving, surfacing with tar, asphalt, bituminous or other appropriate material, resurfacing, resealing, and repairing of any street, highway, avenue, alley, or public place within the municipality, and the construction and reconstruction of overhead pedestrian bridges, pedestrian tunnels, storm sewers, curbs and gutters, sidewalks, and service connections for water and other utilities, and the installation, operation, and maintenance of street lights and all types of decorative street lighting, including but not restricted to Christmas street lighting decorations;
3. The improvement of boulevards and other public places by the planting of trees, the construction of grass plots and the sowing of grass seed therein, and the maintenance and preservation of such improvements by the watering of such trees and grass, the cutting of such grass, and the trimming of such trees, or otherwise in any manner which may appear necessary and proper to the governing body of the municipality;
4. The acquiring of the necessary land and easements and the construction of the necessary works, within and without the municipality, for flood protection of properties within the municipality; and
5. The acquiring or leasing of the necessary property and easements and the construction of parking lots, ramps, garages, and other facilities for motor vehicles.

In planning an improvement project of a type specified in any one of the foregoing subsections, the governing body may include in such plans any and all items of work and materials which in its judgment are necessary or reasonably incidental to the completion of an improvement project of such type.

Source: N.D.C.C.; S. L. 19 1, ch. 400, § 1.

Constitutionality.

This chapter is constitutional. Fisher v. City of Minot, 188 NW 2d 745.

Legislative Authority.

The legislature, in the exercise of its general powers, may direct, subject to constitutional restrictions, that the cost of local improvements be assessed upon property benefitted, and this power may be delegated to municipalities. Fisher v. City of Minot, 188 NW 2d 745.

40-22-05. Condemnation of land and rights of way for special improvements—Taking of possession—Trial—Appeal—Vacation of judgment.—Whenever property required to make any improvement authorized by this chapter is to be taken by condemnation proceedings, the court, upon request by resolution of the governing body of the municipality making such improvement, shall call a special term of court for the trial of such proceedings and may summon a jury for such trial whenever necessary. Such proceedings shall be instituted and prosecuted in accordance with the provisions of chapter 32-15, except that when the interest sought to be acquired is a right of way for the opening, laying out, widening, or enlargement of any street, highway, avenue, boulevard, or alley in the municipality, or for the laying of any main, pipe, ditch, canal, aqueduct or flume for conducting water, storm water, or sewage, whether within or without the municipality, the municipality may make an offer to purchase such right of way and may deposit the amount of such offer with the clerk of the district court of the county wherein the right of way is located, and may thereupon take possession of such right of way forthwith. Such offer shall be made by resolution of the governing body of the municipality, a copy of which shall be attached to the complaint filed with said clerk of court in accordance with section 32-15-13. The clerk shall immediately notify the owner or owners of the land wherein the right of way is located of such deposit, by causing a notice to be appended to the summons when served and published in said proceedings as provided in sections 32-15-08 to 32-15-11, stating the amount deposited or agreed in such resolution to be deposited. The owner may thereupon appeal to the court by filing an answer to the complaint in the manner provided in chapter 32-15, and may have a jury trial, unless a jury be waived, to determine the damages. However, upon due proof of the service of said notice and summons and upon deposit of the aggregate sum agreed in said resolution, the court may without further notice make and enter an order determining the municipality to be entitled to take immediate possession of the right of way. In the event that under laws of the United States proceedings for the acquisition of any right of way are required to be instituted in or removed to a federal court, such proceedings may be taken in such court in the same manner and with the same effect as herein provided; and the clerk of the district court of the county wherein the right of way is located shall perform any and all of the duties herein set forth, if and to the extent that he is directed so to do by such federal court. Such proceedings shall be determined as speedily as practicable. An appeal from a judgment in such condemnation proceedings shall be taken within sixty days after the entry of the judgment, and such appeal shall be given preference by the supreme court over all other civil cases except election contests. No final judgment in such condemnation proceedings awarding damages to property used by a municipality for street, sewer, or other purposes shall be vacated or set aside if the municipality shall pay to the defendant, or shall pay into court for the defendant, in cash, the amount so awarded. The municipality may levy special assessments to pay all or any part of such judgment and at the time of the next

annual tax levy, may levy a general tax for the payment of such part of the judgment as is not to be paid by special assessment. For the purpose of providing funds for the payment of such judgment, or for the deposit of the amount offered for purchase of a right of way as hereinabove provided, the municipality may issue warrants on the fund of the improvement district as provided in section 40-24-19. in anticipation of the levy and collection of special assessments and of any taxes or revenues to be appropriated to such fund in accordance with the provisions of this title. Such warrants may be issued upon the commencement of said proceedings or at any time thereafter. Upon the failure of the municipality to make payment in accordance with this section, the judgment in the condemnation proceedings may be vacated.

Source: S. L. 1905, ch. 62, § 174; R. C. 1905, § 2812; C. L. 1913, § 3737; R. C. 1943, § 40-2205; S. L. 1961, ch. 274, § 1.

Manner of Payment.

Fact that the city did make and levy a special assessment within the time required and did issue city warrants therefor did not grant to it any authority to evade the mandatory constitutional provision that payment in eminent domain proceedings must be made in money, either in court or to the owner. *City of Minot v. Olson*, 42 ND 246, 173 NW 458.

Decision under Prior Law.

Under section 14 of the state constitution, it is not proper to require property owner whose land is taken under this statute to receive a city warrant in payment or to be compelled to wait until such time in the future as a special assessment might be collected in cash. *City of Minot v. Olson*, 42 ND 246, 173 NW 458.

Collateral References.

Eminent Domain—9, 12 et seq.
26 Am. Jur. 2d, Eminent Domain, § 27 et seq.
29 C. J. S. Eminent Domain, §§ 21, 29 et seq.

Public benefit or convenience as distinguished from use by public as ground for exercise of power of eminent domain, 54 ALR 7.

Interstate character of use to which property taken is to be devoted as affecting power of eminent domain, 90 ALR 1032.

Housing and slum clearance, 130 ALR 1076; 172 ALR 970.

Condemnation of materials for highways, 172 ALR 131.

Off-street public parking facilities, 8 ALR 2d 394.

Power to condemn abutting owner's right of access to limited access highway or street, 43 ALR 2d 1073.

Validity, construction, and effect, of statutes authorizing eminent domain for urban redevelopment by private enterprise, 44 ALR 2d 1420.

40-22-06. Municipality may enter into agreement with highway department or county for certain improvements.—Any municipality in this state, through its governing body, may enter into an agreement with the highway department of the state of North Dakota, or with the board of county commissioners of the county in which such municipality is located, or both, for the improvement of streets, sewers, and water mains, or of any of such facilities, under the terms of which the contract for such work is to be let by the state highway department or by the board of county commissioners, or by both jointly, and for this purpose may create a special improvement district or districts. No such agreement shall be entered into until and unless the governing body certifies

that they have obtained authority in accordance with this section to issue improvement warrants to finance the amount that the municipality will be obligated to pay thereunder, over and above the amount of any bonds which have been voted and any other funds which are on hand and properly available for such purpose. If any portion of the cost is to be paid by the levy of special assessments, the governing body shall by resolution declare the necessity of the improvement, setting forth its general nature, the approximate amount or fraction of the cost which the municipality will be obligated to pay under the agreement, and the fact that this amount, or such lesser amount as the governing body may specify, is proposed to be paid by the levy of special assessments upon property determined to be benefited by the improvement. Any portion of the cost for which the municipality is obligated and which is not assessed upon benefited property or paid from other funds may be agreed to be paid by general taxation of all the taxable property in the municipality, if approval for the incurring of such debt is obtained and provision for the payment thereof is made in accordance with section 40-21-10. The resolution of necessity shall be published once each week for two consecutive weeks in the official newspaper of the municipality and protests may be filed and their sufficiency to bar the improvement shall be determined in accordance with sections 40-22-16 to 40-22-18, inclusive; except that if under the terms of the resolution of necessity the portion of the cost of the project to be assessed upon benefited property does not exceed twenty-five percent of the total cost to be paid by the highway department or county and municipality, written protests by the owners of seventy-five percent of the property liable to be assessed for the improvement shall be required to bar further proceedings with reference thereto. In districts created under this section the governing body may dispense with all requirements, other than those herein stated, preliminary to the construction of an improvement by the special assessment method, including the preparation and approval of plans and specifications, advertisement for bids, and execution of contracts and bonds. At any time after the period for filing protests has expired and the protests filed, if any, have been heard and determined to be insufficient, the governing body may issue warrants on the fund of the improvement in the total amount for which the municipality is obligated under the agreement, and may cause to be certified to the special assessment commission that portion of the cost to be borne by the property owners within the district, and the assessment of such amount may be made and such warrants may be issued as in other cases provided for in chapters 40-23 and 40-24.

Source: S. L. 1941, ch. 203, § 1; R. C. 1943, § 40-2206; S. L. 1963, ch. 294, § 1; 1967, ch. 330, § 1.

40-22-06.1. Cities with a population of over ten thousand may enter into agreement with highway department or county for certain improvements.—Repealed by S. L. 1963, ch. 294, § 2.

40-22-07. Dispensing with preliminary requirements in making improvements in conjunction with highway department or county.—Repealed by S. L. 1963, ch. 294, § 2.

40-22-08. Improvement districts to be created.—For the purpose of making an improvement project of one of the types specified in section 40-22-01 and defraying the cost thereof by special assessments, a municipality may create water districts, sewer districts, water and sewer districts, street improvement districts, boulevard improvement districts, flood protection districts, and parking districts, and may extend any such district when necessary. The appropriate special improvement district may be created by ordinance or resolution. The district shall be designated by a name appropriate to the type of improvement for the making of which it is created, and by a number distinguishing it from other improvement districts. Nothing herein, however, shall prevent a municipality from making and financing any improvement and levying special assessments therefor under any alternate procedure set forth in this title.

Source: S. L. 1897, ch. 41, §§ 1, 4, 8; 1899, ch. 42, §§ 1, 4; R. C. 1899, §§ 2326f, 2326u, 2326x; S. L. 1905, ch. 62, §§ 137, 141; R. C. 1905, §§ 2772, 2776; S. L. 1911, ch. 70, §§ 1, 3; 1913, ch. 74, §§ 1, 3; C. L. 1913, §§ 3698, 3702; R. C. 1913, §§ 40-2203; S. L. 1949, ch. 267, § 2; 1957 Supp., § 40-2208; S. L. 1959, ch. 306, § 2.

Cross-Reference.

Validation of proceedings taken prior to March 7, 1955 by cities over ten thousand for creation of improvement districts, notwithstanding certain defects, see § 1-06-06.

Amount of Benefits.

The amount of benefits resulting from the improvement is a question of fact, and, assuming that there has been a hearing thereon, the decision of the special assessment board is final. *Ellison v. City of LaMoure*, 30 ND 43, 151 NW 988.

Discretion of City Commissioners.

The size and the form of a special assessment district is a matter to be decided entirely by the city council, after consultation with the city engineer. *Robertson Lbr. Co. v. City of Grand Forks*, 27 ND 556, 147 NW 249.

The city council or commission is authorized to determine upon the necessity for the construction or alteration of sewers in the city. *McKenzie v. City of Mandan*, 35 ND 107, 160 NW 852.

• The city authorities have a wide dis-

cretion in determining the area of a proposed improvement district, but it is contemplated that they should exercise judgment and discretion in so doing. *Merchants' Nat. Bank of Fargo v. City of Devils Lake*, 42 ND 445, 173 NW 748.

• The discretion of the board of city commissioners as to the paving of streets is not subject to restraint by a court of equity. *Hufford v. Flynn*, 48 ND 33, 182 NW 841.

Jurisdictional Prerequisite.

Before a public improvement which is to be paid for by special assessments may be undertaken, an improvement district must be created as a jurisdictional prerequisite. *Merchants' Nat. Bank of Fargo v. City of Devils Lake*, 42 ND 445, 173 NW 748; *Boynton v. Board of City Comrs. of Minot*, 54 ND 795, 211 NW 441.

• If a special assessment district is not created before the making of a public improvement, special assessments levied for the payment of the improvement are invalid. *Minneapolis, St. P. & S. S. M. Ry. Co. v. City of Minot*, 51 ND 313, 199 NW 875, 37 ALR 211.

The statutes granting cities the power to widen, pave, and otherwise improve streets and avenues are mandatory and not merely directory. The provisions prescribe the method of procedure to be followed and must be strictly observed. *Murphy v. City of Bismarck*, 109 ND 2d 635, 643.

40-22-09. Size and form of improvement districts—Regulations governing.—Any improvement district created by a municipality may embrace two or more separate property areas. Each improvement district shall be of such size and form as to include all properties which in the judgment of the governing body, after consultation with the engineer planning the improvement, will be benefited by the construction of the improvement project which is proposed to be made in or for such district, or by any portion or portions of such project. A single district may be created for an improvement of the type specified in any one of the subsections of section 40-22-01. notwithstanding any lack of uniformity among the types, items, or quantities of work and materials to be used at particular locations throughout the district. The jurisdiction of a municipality to make, finance, and assess the cost of any improvement project shall not be impaired by any lack of commonness, unity, or singleness of the location, purpose or character of the improvement, or by the fact that any one or more of the properties included in the district is subsequently determined not to be benefited by the improvement, or by a particular portion thereof, and is not assessed therefor. There may be omitted from a water or sewer district, in the discretion of the governing body, properties within the corporate limits which are benefited by the improvement therein but do not abut upon a water or sewer main, without prejudice to the right and power of the municipality subsequently to assess such properties to the extent and in the manner permitted by law. The governing body may by resolution enlarge an improvement district in which an improvement is proposed or under construction upon receipt of a petition therefor signed by the owners of three-fourths of the area to be added to the district.

Source: N.D.C.C.; S. L. 1971, ch. 402,
§ 1.

CHAPTER 40-34

SEWAGE AND GARBAGE DISPOSAL

Section		Section	
40-34-01	Disposal of garbage or sewage in municipalities—Acquiring land.	40-34-10	Franchise granted to holder of sheriff's deed to operate property — Contents of franchise.
40-34-01.1	Municipalities to maintain sanitary conditions on certain roads—Exception.	40-34-11	Revesting title and ownership of improvement or utility in municipality.
40-34-02	Methods of defraying cost of sewage or garbage disposal improvements.	40-34-12	Appeal from decision of public service commission in revesting title — Conditions.
40-34-03	Mortgages and mortgage bonds—Issuance over debt limit—Not general obligations—Vote required to issue—Conditions.	40-34-13	Residue of money remaining after payment of bonds—Disposal.
40-34-04	Bonds may be issued by municipality—Term of bonds —Determining conditions.	40-34-14	Payment of bonds by taxation—Limitations.
40-34-05	Supervision and control of plant—Rules and regulations governing—Charges for use of plant—Failure to pay—Collection.	40-34-15	Agreements between municipalities within and without state—Acquiring property—Erecting dams—Use of waters — Eminent domain.
40-34-06	Sinking fund for payment of interest and principal.	40-34-16	Contractual relationship between municipalities—Approval—Operating as an independent enterprise.
40-34-07	First mortgage bonds are negotiable.	40-34-17	Municipality which authorized bond issue prior to March 3, 1933 may finance under this chapter.
40-34-08	Tax levy to pay deficiency when bonds become due.	40-34-18	Power granted by chapter considered an addition.
40-34-09	Action maintained on failure to pay principal or interest of bonds — Court receiver—Sale of property—Redemption — Sheriff's deed.		

widening without taking buildings and improvements or substantially impeding the movements of pedestrians using the facilities of the central business district.

4. Orderly plans for urban renewal, rehabilitation and redevelopment may require or may be facilitated by such an improvement.
5. Pedestrian use may be the highest and best use of such streets, and the limitation of the use thereof by vehicles may be in the best interest of the city and of the optimum benefit to the properties in the improvement district, if:
 - a. Reasonably convenient alternate routes exist for vehicles going through the central business district to other parts of the city and the state; and
 - b. The designated streets are not federal, state or county highways, or, if they are, the making of the improvement is conditioned upon the relocation of such highways in the manner provided by law; and
 - c. Properties abutting on the designated streets can reasonably and adequately receive and deliver merchandise and materials either from other streets or alleys, or by providing for limited use of the designated streets for this purpose.

Source: S. L. 1967, ch. 343 § 2.

40-62-03. Plans and specifications. — The plans and specifications shall provide for improvement of the designated streets in a manner designed for use primarily for the free movement, safety, convenience, and enjoyment of pedestrians, whether or not part of the mall is made available for emergency or other permitted vehicles. A mall improvement may provide for and include space for seating, cafe tables, shelters, trees, flower plantings, sculptures, newsstands, telephone booths, traffic signs, kiosks, fire hydrants, street lighting, ornamental lights, trash receptacles, display cases, marquees, awnings, canopies, overhead and underground radiant heating devices, walls, barriers, and all such other fixtures, equipment, facilities, and appurtenances as will in the governing body's judgment enhance the free movement, safety, convenience, and enjoyment of pedestrians and benefit the adjoining properties and the central business district and the city. Sidewalks may be constructed of concrete, bricks, asphalt tiles, blocks, granite sets, or such other materials or combinations of materials as the governing body may approve. The governing body may in its discretion narrow any roadway to be kept and maintained in the mall, may cause any street vaults to be reconstructed or removed, may construct crosswalks at any point within or at the ends of blocks, and may cause any roadway to curve and meander within the limits of the street, if deemed desirable to enhance the usefulness or appearance of the mall, regardless of any nonuniformity of street width or any curve or absence of curve in the center line of the street.

Source: S. L. 1967, ch. 343, § 3.

control devices, trees, flowers, lighting or heating facilities, and any other equipment or properties placed or installed in the mall, whether owned by the city or others, and may license and regulate the operation and maintenance thereof; and

5. Any furniture, structure, facility, or use located or permitted pursuant to such a plan shall not, by reason of such location or use, be deemed a nuisance or unlawful obstruction or condition, and neither the city nor any user acting under permit shall be liable for any injury to person or property therefor unless directly caused by its own negligence or that of its employees in the construction, maintenance, or operation of such furniture, structure, facility, or use.

Source: S. L. 1967, ch. 343, § 5.

40-62-06. Maintenance and improvement.—A pedestrian mall established pursuant to this chapter may be maintained and the cost of such maintenance may be paid by all means permitted by law for other streets. The governing body may also annually cause an estimate to be made of the probable cost of such maintenance during the current fiscal year, in excess of the cost of maintenance of streets of similar length, width, and location not used as a mall, and may assess such excess cost of maintenance on properties within the improvement district, provided that such assessments shall not exceed the special benefits determined to be received by said properties from such maintenance. The assessment list approved by the governing body shall be filed in the office of the city auditor, who shall mail to the street address of each lot and parcel proposed to be assessed, and to such other address as may be requested in writing by the owner or occupant of any such lot or parcel, a notice stating the amount proposed to be assessed upon such lot or parcel, and that any objection thereto may be made in writing filed with the city auditor on or before a specified date, not less than twenty days after such mailing on which date, at a time and place specified in the notice, the governing body will consider all objections. At this meeting, or any adjournment thereof, the governing body shall review all assessments and hear all persons desiring to be heard, and may amend the assessments in such manner as it shall determine to be just and reasonable, and may confirm the same and direct the assessment list to be filed with the county auditor, and the assessments made therein to be extended upon the tax lists of the city for the current year and collected with interest and penalties as general taxes are collected and paid over to the city treasurer and placed by him in a special fund to be used only for the purpose of current, reasonable and necessary expenses of the operation and maintenance of the mall.

Source: S. L. 1967, ch. 343, § 6.

40-62-07. Additional improvements and extensions.—An established pedestrian mall may be subsequently improved or extended by proceed-

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ings taken in the same manner as the US establishment, and such improvements or extensions may thereafter be regulated and maintained as provided above.

Source: S. L. 1967 ch. 343, § 7.

CHAPTER 61-16

WATER CONSERVATION AND FLOOD CONTROL DISTRICTS

Section		Section	
61-16-01	Definitions.	61-16-17	Dams constructed within a district shall come under control of board of commissioners.
61-16-02	Petition for establishment of water conservation and flood control district—Hearing thereon and investigation—District when created.	61-16-18	When dams constructed by federal agency under control of board of county commissioners.
61-16-03	Bond to accompany petition for district—When—Exception.	61-16-19	May contract with federal and state governments—Local districts, persons and corporations—Acquire property in adjoining states.
61-16-04	Resolution of governing body of public corporation filed with commission.	61-16-20	Exemption of federal agencies from provisions of chapter—Purpose of chapter.
61-16-05	Area to be included within district—How determined.	61-16-21	Financing project through special assessments or partly through general taxes and partly through special assessments—Apportionment of benefits.
61-16-06	Order establishing water conservation and flood control district.	61-16-22	Financing of special improvements—Procedure.
61-16-07	Board of water conservation and flood control commissioners—Appointment and number.	61-16-23	Resolution of board to include provision for protesting and refusing authority to make general tax levy in certain cases—Election to be held.
61-16-08	Eligibility for appointment to board—Term of office—Filling vacancies—Compensation of commissioners.	61-16-24	When assessments may be made.
61-16-09	Oath of office—Organization of board of commissioners—Appointment of employees—Meetings.	61-16-25	Assessment lists.
61-16-10	Bonds of treasurer and appointive officers.	61-16-26	Assessment list to be prepared—Contents—Certificate attached to assessment list—Preparation of assessment list and notice of hearing of objection to list—Alteration of assessments at hearing—Limitations—Confirmation of assessment list of board certifying list—Filing.
61-16-11	Powers and duties of board of commissioners.	61-16-27	Correction of errors, and mistakes in special assessments—Regulations governing.
61-16-12	District budget—Tax levy—Financing by special assessment.	61-16-28	Certification of assessments to county auditor.
61-16-13	District may issue warrants in anticipation of taxes levied to pay current expenses.	61-16-29	Extension of special assessments on tax lists—Collection—Payment to water conservation and flood control district.
61-16-14	County treasurer to collect and remit taxes to district treasurer—Deposit of district funds.		
61-16-15	Construction and repair of dam—Proposals for—Presented to whom—Hearing proposals.		
61-16-16	Commission and board of commissioners shall encourage construction of dams and other water control devices.		

- 61-16-31 Sale of property from general and special assessments—See Assessments.
- 61-16-32 Warrants or licenses—When payable—Assessments—Interest—Interest coupons.
- 61-16-33 Warrants may be used in settling claims to the water trust—Vouchers payable out of fund on which drawn—May be used to pay special assessments.
- 61-16-34 Refunding bonds—Assessment warrants—Compensation for which such warrants may be issued—Payment of warrants.
- 61-16-35 Financial powers—Licensing for business.
- 61-16-36 Appeal from decision of commissioner or board of commissioners—Jurisdiction—Jurisdiction.

- 61-16-37 Division or award of commissioners—How to be taken.
- 61-16-38 How to take appeal from commission or board of commissioners.
- 61-16-39 Filing appeal—Collecting and hearing appeals—Final judgments and judgments.
- 61-16-40 Board's authority and attorney general—Assessors' board—Establishment of counsel.
- 61-16-41 Construction of bridges and highways—Cost.
- 61-16-42 How district may be dissolved or land expropriated therefrom.
- 61-16-43 Proceedings to specially condemn—Special assessments and other fees.
- 61-16-44 Punishing the violation of enactments.
- 61-16-45 Public utility organization and system—Water conservation and flood control districts.

CHAPTER 61-16—WATER MANAGEMENT DISTRICTS

- | Section | Section | Section |
|--|---|--|
| 61-16-01 Definitions. | 61-16-10 District may issue warrants on evaluation of taxes levied to pay certain expenses. | 61-16-11 District may issue warrants on evaluation of taxes levied to pay certain expenses. |
| 61-16-05 Establishment of water management districts—How to be included. | 61-16-14 District may be required to collect and remit taxes to district treasurer—Deposit of district funds. | 61-16-15 Construction and repair of water—Proposals for—Presented to whom—Hearing proposals. |
| 61-16-06 Order creating water management district. | 61-16-16 District may be established within a district shall come under control of board of commissioners. | 61-16-17 When water constructed by district or under control of water management district. |
| 61-16-07 Board of commissioners—Appointment and removal. | | |
| 61-16-08 Eligibility for appointment to board—Term—Removal—Compensation of commissioners. | | |
| 61-16-11 Powers and duties of board of commissioners. | | |
| 61-16-12 District subject to review—Financially—By commissioner. | | |
| Section | Section | Section |
| 61-16-19 May contract with foreign or state governments—Local districts, public and corporations—Establishment of municipal districts—Transfer property in adjoining cities and precincts. | 61-16-20 Extension of special assessments on the line—Collection—Payment to water management district. | 61-16-21 District may issue warrants on evaluation of taxes levied to pay certain expenses. |
| 61-16-19.1 Contract for construction of maintenance of project. | 61-16-22 District may be required to collect and remit taxes to district treasurer—Deposit of district funds. | 61-16-23 District may be established within a district shall come under control of board of commissioners. |
| 61-16-21 Financing project through special assessments or partly through general assessments—Appointment of benefits. | 61-16-24 District may be established within a district shall come under control of board of commissioners. | 61-16-25 District may be established within a district shall come under control of board of commissioners. |
| 61-16-22 Financing of water management—Provisions. | 61-16-26 District may be established within a district shall come under control of board of commissioners. | 61-16-27 District may be established within a district shall come under control of board of commissioners. |
| 61-16-23 Resolution of board of commissioners—Provisions for district or for refusing to accept or to make general law 1917 in certain cases—District or board. | 61-16-28 District may be established within a district shall come under control of board of commissioners. | 61-16-29 District may be established within a district shall come under control of board of commissioners. |
| 61-16-26.1 Reassessment of benefits. | 61-16-30 District may be established within a district shall come under control of board of commissioners. | 61-16-31 District may be established within a district shall come under control of board of commissioners. |
| 61-16-28 Certification of assessment to county auditor. | 61-16-32 District may be established within a district shall come under control of board of commissioners. | 61-16-33 District may be established within a district shall come under control of board of commissioners. |
| 61-16-28.1 Removal of district from a drain—Notice and hearing—Appeal—Assessment. | 61-16-34 District may be established within a district shall come under control of board of commissioners. | 61-16-35 District may be established within a district shall come under control of board of commissioners. |

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NORTH DAKOTA CONSTITUTION, Art. I, §14

Section 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, provided however, that when the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages.

Amendment: Art. 66, June 26, 1956
(S. L. 1957, ch. 397).

TEXT OF ORIGINAL SECTION

Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived.

City Use of Railroad Property.

A railroad is not entitled to damages for structural changes necessary when a city condemns a part of the right of way for a street. The damages allowed in such cases are for the diminution in value of its exclusive right to the use of the condemned property for railway purposes. *Grafton v. St. Paul M. & M. Ry. Co.*, 16 ND 313, 113 NW 598, 22 LRA (NS) 1.

Condemnation by Highway Department.

This section, as amended in 1956, and the subsequent statute 24-01221, 1957 Supp., superseded sections 24-0118, 24-0119 and 24-0123, making them inoperative, inapplicable and of no effect in so far as the state or any of its agencies are concerned seeking to acquire right of way. *Kuecks v. Cowell*, 97 NW 2d 849.

Costs.

A landowner who resists the taking of his land for public purposes upon a failure to agree upon the value thereof, and recovers judgment therefor, is entitled to recover his taxable costs in the action. *Petersburg School District v. Peterson*, 14 ND 344, 103 NW 756.

The requirement that full compensation shall be paid to owners before taking their property for public use includes the cost of trial and appeal. *Mounttrail County v. Wilson*, 27 ND 277, 146 NW 531.

Creation of Highways by Prescription.

The public may condemn and may prescribe rules of evidence under which a dedication will be presumed after an uninterrupted use by the public for a certain number of years, provided the owner

CHAPTER 32-15 EMINENT DOMAIN*

Section		Section	
32-15-01	"Eminent domain" defined — How exercised.	32-15-06	Entry for making surveys.
32-15-02	Purposes for which exercised.	32-15-07	Proceedings by civil action— Repealed.
32-15-03	What estate subject to be taken.	32-15-08	Form of summons — When served—Repealed.
32-15-03.1	Declaration of legislative intent—Repealed.	32-15-09	Service by publication — Repealed.
32-15-03.2	Termination of estates greater than one year—Repealed.	32-15-10	Copy of summons served through mails—Repealed.
32-15-04	What property may be taken.	32-15-11	Service complete, when—Repealed.
32-15-05	What must appear before property taken.		

*Only §§ 32-15-01, 32-15-02, and 32-15-03 are reproduced

Section		Section	
32-15-12	When note of issue filed — Repealed.	32-15-23	When right to damages accrues.
32-15-13	Jury may be demanded.	32-15-24	When title defective.
32-15-14	When sheriff's fees to be advanced by plaintiff — Surety for jury fees.	32-15-25	When judgment paid.
32-15-15	Note of issue, filing—Repealed.	32-15-26	Payment or deposit — Proceedings annulled.
32-15-16	Special term of court to hear issue.	32-15-27	Final order—Filing.
32-15-17	Issues tried at any term of court.	32-15-28	Public corporation bound by judgment.
32-15-18	What complaint must contain.	32-15-29	When possession taken—How money paid defendant—Acceptance — Abandonment of defenses.
32-15-19	Joinder, consolidation, and separation of proceedings.	32-15-30	Payment of money into court at risk of plaintiff.
32-15-20	Who may defend.	32-15-31	Deposit of money with state treasurer.
32-15-21	Power of court.	32-15-32	Costs.
32-15-22	Assessment of damages.	32-15-33	Rules of practice.
		32-15-34	New trials and appeals.

32-15-01. "Eminent domain" defined—How exercised.—Eminent domain is the right to take private property for public use. Private property shall not be taken or damaged for public use without just compensation first having been made to or paid into court for the owner. In case such property is so taken by a person, firm, or private corporation, no benefit to accrue from the proposed improvement shall be allowed in ascertaining the compensation to be made therefor. Such compensation in all cases shall be ascertained by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.

Source: N. D. Const., § 14; R. C. 1895, § 5955; R. C. 1899, § 5955; R. C. 1905, § 7574; C. L. 1913, § 8202; R. C. 1943, § 32-1501.

Additional Servitude.

The erection of poles in a street without the consent of or compensation to abutting owners constitutes an additional servitude. *Donovan v. Allert*, 11 ND 289, 91 NW 441, 58 LRA 775.

The construction and operation of a telegraph and telephone line on a rural highway is not a highway use, within the purpose of its original dedication, but a new use, and it constitutes an additional servitude upon the fee of the abutting owner which entitles him to compensation. *Cosgriff v. Tri-State Telephone & Telegraph Co.*, 15 ND 210, 147 NW 525, 5 LRA (NS) 1142, explained in 72 ND 497, 8 NW 2d 599; *Tri-State Telephone & Telegraph Co. v. Cosgriff*, 19 ND 771, 124 NW 75, 26 LRA (NS) 1171.

Award of Compensation.

In eminent domain proceedings the court has no power to stay the trial of the question of damages or compensation pending the final determination of the other issues. *State ex rel. Northern States Power Co. v. Teigen*, 80 NW 2d 110.

Ordinarily an award of compensation in a condemnation case will be sustained if the amount is within the limits testified to by the witnesses, but where the award is so flagrantly against the weight of the evidence that it appears the jury were actuated by bias or prejudice, the award will be set aside. *Montana Electric Utilities Co. v. Culver*, 80 NW 2d 541; *Northern States Power Co. v. Ebertz*, 94 NW 2d 288.

Jury Trial.

The issue of compensation for private property taken or damaged for public use must be tried to a jury, unless a jury is waived; all other issues in a

eminent domain action are triable to the jury without a jury. *Bigelow v. Draper*, 4 ND 152, 69 NW 570, distinguished in 16 ND 313, 113 NW 598; *County of Pembina v. Nord*, 78 ND 473, 49 NW 265; *Kessler v. Thompson*, 75 NW 2172.

Measure of Damages.

If the value of a tract of real estate is in controversy in condemnation proceedings, and the only evidence is that of experts, who differ in their opinions as to its value, the jury may not disregard all the evidence in the case, and fix a value below the lowest or above the highest estimate of the experts, despite the fact that they may have inspected land under the order of the court. *Bigelow v. Draper*, 6 ND 152, 69 NW 570, distinguished in 16 ND 313, 113 NW 598.

If property has been taken from the plaintiff for a public use she is entitled to recover the value of the property and any and all damages whether the damage be direct, as when caused by trespass or physical invasion of the property, or consequential, as in diminution of the market value. *Williams v. Fargo*, 63 ND 33, 247 NW 46.

The measure of damages for condemnation of an easement for an electric transmission line right of way over land is the value of the easement taken, as determined by the depreciation in value of the landowner's interest in the property before taking, and not by the value of the easement to the plaintiff. *Otter Tail Power Co. v. Von Bank*, 72 ND 497, 1 NW 2d 599, 145 ALR 1313.

Municipal Corporations.

A city has the power, through its city council, to lay out and open streets and, when necessary, to exercise the right of eminent domain. *City of Lidgerwood v. Michalek*, 12 ND 348, 97 NW 541.

A township, in taking land for road purposes, though acting in an irregular manner, is not a trespasser or tortfeasor. *Schilling v. Carl Township*, Grant County, 60 ND 480, 235 NW 126.

A township whose officers took possession of plaintiff's land in an improper manner for a public road is liable for just compensation. *Schilling v. Carl Township*, Grant County, 60 ND 480, 235 NW 126.

Railroad.

The taking of property by eminent domain for a railroad purpose is a taking for public use. *Northern Pac. Ry. Co. v. Boynton*, 17 ND 203, 115 NW 679.

Taxable Costs.

A landowner who resists the taking of his land for a public purpose is entitled, on the recovery of judgment, to taxable costs. *Petersburg School District v. Peterson*, 14 ND 344, 103 NW 756.

Collateral References.

Eminent Domain, § 1 et seq.

18 Am. Jur., Eminent Domain, § 1 et seq.

29 C. J. S. Eminent Domain, §§ 1-333;

30 C. J. S. Eminent Domain, §§ 334-461.

32-15-02. Purposes for which exercised.—Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States;
2. Public buildings and grounds for the use of the state and all other public uses authorized by the legislative assembly of the state;
3. Public buildings and ground. for the use of any county, city, park district, village, or school district; canals, aqueducts, ditches, culverts, or pipes for conducting water for the use of the inhabitants of any county, city or village, or for draining any county, city, or village; raising the banks of streams, removing obstructions therefrom and widening, deepening, or straight-

ening their channels; roads, streets, and alleys, and all other uses for the benefit of any county, city, park district, or village, or the inhabitants thereof, which may be authorized by the legislative assembly, but the mode of apportioning and collecting the costs of such improvement shall be such as may be provided in the statutes by which the same may be authorized;

4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, railroads and street railways, electric light plants and power transmission lines and canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and irrigating, draining, and reclaiming lands;
5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, outlets, natural or otherwise for the flow, deposit, or conduct of the tailings or refuse from mines and mill dams;
6. Byroads leading from highways to residences and farms;
7. Telegraph and telephone lines;
8. Sewage disposal of any city, or village, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or of any college or university;
9. Cemeteries and public parks;
10. Oil, gas, and coal pipelines and works and plants for supplying or conducting gas, oil, coal, heat, refrigeration, or power for the use of any county, city, or village, or the inhabitants thereof, together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of generating, refining, regulating, compressing, transmitting, or distributing the same, or necessary for the proper development and control of such gas, oil, coal, heat, refrigeration, or power, either at the time of the taking of said property or for the future proper development and control thereof; and
11. Lands sought to be acquired by the state or any duly authorized and designated state official or board, which lands necessarily must be flooded in widening or raising the waters of any body or stream of navigable or public water in the state of North Dakota.

Source: R. C. 1895, § 5956; R. C. 1899, § 5956; R. C. 1905, § 7575; C. L. 1913, § 8203; S. L. 1915, ch. 153, § 1; 1925 Supp., § 8203; S. L. 1931, ch. 143, § 1; R. C. 1943, § 32-1502.

Cross-References.

Eminent domain by airport authority, see § 2-06-08.

Eminent domain, who may exercise to acquire property for use of water, see § 61-01-04.

Municipality may acquire property for sewers and sewage treatment plants, and streets, see §§ 40-34-15, 40-39-02.

Municipality may condemn land for special improvements, see § 40-22-05.

Power Transmission Line.

An easement for a power transmission line may be acquired by eminent domain. *Ottawa Tail Power Co. v. Malmie*, 92 N.D. 2d 14.

Railroads.

Property necessary for the construction, maintenance, or operation of a railroad is property necessary for a public use. *Northern Pac. Ry. Co. v. Boynton*, 17 ND 203, 115 NW 679.

Restrictions.

A county exercising the power of eminent domain to obtain gravel may not take the fee title. *Sheridan County v. Davis*, 61 ND 744, 240 NW 867.

The grant of power to a governmental subdivision to exercise the right of eminent domain should be strictly construed. *Sheridan County v. Davis*, 61 ND 744, 240 NW 867.

School District.

A special school district has express statutory authority to acquire a school site and grounds by eminent domain. *Board of Education of City of Minot v. Park District of City of Minot*, 70 NW 24 899.

Streets.

The question of the expediency or public necessity for extending street across railroad right of way was a question exclusively for the city council to determine and its determination is conclusive. *City of Grafton v. St. Paul, M. & M. Ry. Co.*, 16 ND 313, 113 NW 598.

The conferring upon a city council expressly of authority to lay out and extend streets, by condemnation, across the right of way of a railway company does not indicate intention to withhold like power from the board of trustees of a village. *Village of Ashley v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 37 ND 147, 163 NW 727.

Telephone System.

The erection of telephone poles in a street is a public use. *Donovan v. Allert*, 11 ND 289, 91 NW 441.

A telephone system is a public use, and to further its establishment the right of eminent domain may be exercised. *Northwestern Telephone Exch. Co. v. Anderson*, 12 ND 585, 98 NW 706.

Collateral References.

Eminent Domain—1-42.
18 Am. Jur., Eminent Domain, §§ 34-51.

29 C. J. S. Eminent Domain, §§ 29-64.

Use of property, power to condemn against particular use, 8 ALR 594.

Park lands, condemnation of, for uses inconsistent with purpose of their dedication, 18 ALR 1271; 63 ALR 493; 144 ALR 510.

Use or improvement of property not taken, exercise of eminent domain to control, 23 ALR 876.

Furnishing electricity to public as public use or purpose for which power of eminent domain may be exercised, 44 ALR 735; 58 ALR 487.

Constitutionality of statute conferring power of eminent domain on private corporation, for educational, religious or recreational purpose, 50 ALR 1530.

Private payment of compensation or costs of improvement as affecting question whether improvement is for public or private purpose, 53 ALR 33.

Public benefit or convenience as distinguished from use by public as ground for exercise of power of eminent domain, 54 ALR 7.

Exercise of eminent domain for purpose of library, 66 ALR 1496.

Exercise of eminent domain for property to be exchanged for other property required for public purpose or use, 68 ALR 442.

Logging road, exercise of eminent domain for purpose of, 86 ALR 552.

Interstate character of use to which property taken is to be devoted as affecting power of eminent domain, 90 ALR 1032.

Housing and slum clearance, 130 ALR 1076; 172 ALR 970.

Airport, exercise of eminent domain for purpose of, 135 ALR 755.

Condemnation of materials for highways, 172 ALR 131.

Condemnation of land by public authority to provide hunting and fishing, 172 ALR 174.

Off-street public parking facilities, 8 ALR 2d 394.

Spur track and the like as constituting a use for which railroad can validly exercise right of eminent domain, 35 ALR 2d 1326.

Compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop the holdings as a single unit and the like, as taking private property for public use, 37 ALR 2d 439.

TITLE 42

NUISANCES

Chapter

42-01 General Provisions, §§ 42-01-01 to 42-01-15.

42-02 Abatement of Common Nuisance, §§ 42-02-01 to 42-02-11.

42-03 Dogs as Public Nuisance, §§ 42-03-01 to 42-03-04.

CHAPTER 42-01

GENERAL PROVISIONS

Section		Section	
42-01-01	Nuisance—Definition.	42-01-10	Abatement by private persons.
42-01-02	Private nuisance—Definition.	42-01-11	Right to damages not prejudiced by abatement.
42-01-03	Private nuisance — Remedies against.	42-01-12	Act done under statutory authority not deemed nuisance.
42-01-04	Abatement by private person.	42-01-13	Liability of successive owners of property for failure to abate nuisance.
42-01-05	Abatement—When notice required.	42-01-14	Lapse of time—Effect on public nuisance.
42-01-06	Public nuisance—Definition.	42-01-15	Maintaining public nuisance is a misdemeanor.
42-01-07	Public nuisance — Remedies against.		
42-01-08	Civil action—When maintainable by a private person.		
42-01-09	Abatement by public officer.		

42-01-01. Nuisance—Definition.—A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission:

1. Annoys, injures, or endangers the comfort, repose, health, or safety of others;
2. Offends decency;
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, navigable river, bay, stream, canal, basin, public park, square, street, or highway; or
4. In any way renders other persons insecure in life or in the use of property.

Source: Civ. C. 1877, § 2047; R. C. 1895, § 5056; R. C. 1899, § 5056; R. C. 1905, § 6641; C. L. 1913, § 7228; R. C. 1943, § 42-01-01.

Derivation: Cal. Civ. C., 3479.

Nuisance Per Se.

A privy is not a nuisance per se but it may become so, depending on the circumstances. *Teinen v. Lally*, 10 ND 153, 86 NW 336.

A baseball game is not a nuisance per se. *Rifley v. Rush*, 51 ND 188, 199 NW 523.

An undertaking establishment is not a nuisance per se. *Meldahl v. Holberg*, 55 ND 523, 214 NW 802.

Public Nuisance.

Permitting noxious weeds to grow on one's land is not a public nuisance. *Langer v. Goode*, 21 ND 462, 131 NW 258.

Power to condemn ~~abutting~~ owner's right of access to limited access highway or street, 43 ALR 2d 1073.

Validity, construction, and effect, of statute authorizing eminent domain for

urban redevelopment by private enterprise, 44 ALR 2d 1420.

Municipal power to condemn cemetery, 54 ALR 2d 1322.

32-15-03. What estate subject to be taken.—The following classification of the estates and rights in lands subject to be a public use:

1. A fee simple, when taken for public buildings or grounds for permanent buildings, for reservoirs and dams and for permanent flooding occasioned thereby, or for an outlet for a place for the deposit of debris or tailings of a mine, or for the construction of parking lots and facilities for motor vehicles.
2. An easement, when taken for highway purposes or for other public use except, upon a proper allegation of the need thereof, the court shall have the power to order that a fee simple be taken for such other use;
3. The right of entry upon and occupation of lands and interests therein to take therefrom such earth, gravel, stones, trees, and other things as may be necessary for a public use.

However, the provisions of this section shall not authorize the taking of any political subdivision thereof to obtain any rights or interests in or to the oil, gas or fluid minerals on or underlying any estate in lands subject to be taken for a public use.

Source: R. C. 1895, § 5957; R. C. 1899, § 5957; R. C. 1905, § 7576; C. L. 1913, § 8204; R. C. 1943, § 32-1503; S. L. 1953, ch. 212, § 1; 1957 Supp., § 32-15031; S. L. 1959, ch. 267, § 1.

Note.

The insertion in subsection 2 of the words "for highway purposes or" in effect combines the provisions of section 32-15-03.1 of the 1957 Supplement into the provisions of this section.

Easement.

A county exercising the power of eminent domain to obtain gravel may not take the fee title, *Sheridan County v. Davis*, 61 ND 744, 240 NW 867.

One conveying an easement in farm land to the county for highway purposes only, which is all that the county could have condemned, has the right to use for agricultural purposes that portion of the land not in use for travel purposes without an express reservation of such right. *Otter Tail Power Co. v. Von Bank*, 72 ND 497, 8 NW 2d 599, 145 ALR 1343.

Since maintenance and repair of electric power transmission lines are essential to the efficient operation of an easement for the location of such lines, the easement must be full, fair, reasonable and proper thereof, the right of ingress and egress. *Otter Tail Power Co. v. Malme*, 22 ND 514.

Fee Simple.

A special school district acquiring fee simple title to its schoolhouse is which is an estate authorized to be taken under this section. *Board of Education of City of Minot v. Park District of City of Minot*, 70 NW 2d 899.

Statutory Authority.

Where an estate or right in lands is sought to be taken by eminent domain, specific statutory authority therefor must appear. *Board of Education of City of Minot v. Park District of City of Minot*, 70 NW 2d 899.

Strict Construction.

The grant of power to a governmental subdivision to exercise the right of

Engaging in barbering without having procured a certificate of registration prescribed by law does not constitute a public nuisance. *Richmond v. Miller*, 70 ND 157, 292 NW 633, distinguished in 87 NW 2d 337.

A usurious small loan business is a public nuisance. *State ex rel. Burgum v. Hooker*, 87 NW 2d 337.

Question of Fact.

The question of nuisance or no nuisance is always a question of fact to be determined on the evidence in each case. *Teinen v. Lally*, 10 ND 153, 86 NW 356.

The manner and place of conducting a business may cause it to become a nuisance, depending on the facts. *Meldahl v. Holberg*, 55 ND 523, 214 NW 802.

Street Obstruction.

A person contracting with a drainage board is liable in tort and not on contract for placing an obstruction in the street. *Solberg v. Schlosser*, 20 ND 307, 127 NW 91, 3 LRA (NS) 1111.

Collateral References.

Nuisance—1-10, 59-70.

39 Am. Jur., Nuisances, §§ 2-4, 43-116.
66 C. J. S. Nuisances, §§ 1-75.

Dust as nuisance, 3 ALR 312; 11 ALR 1401; 24 ALR 2d 233.

Bowling alley as nuisance subject to regulation or abatement, 20 ALR 1482; 29 ALR 41; 53 ALR 149; 72 ALR 1339.

Billiard or poolroom as nuisance, 20 ALR 1482; 29 ALR 41; 53 ALR 149; 72 ALR 1339.

Undertaker's establishment as a nuisance, 23 ALR 745; 43 ALR 1171; 87 ALR 1061; 39 ALR 2d 1000.

Noise from operation of gas works as nuisance, 23 ALR 1407; 90 ALR 1207.

Slaughterhouse as nuisance, 27 ALR 329.

Baseball park as nuisance, 33 ALR 727.

Gas plant as nuisance, 37 ALR 800.

Manner of, or circumstances attending, performance of duty enjoined by law as creating nuisance, 38 ALR 1437.

Bees as nuisance, 39 ALR 352.

Words as nuisance, 48 ALR 83.

Piggery as nuisance, 50 ALR 1015.

Soft coal, burning of, as a nuisance, 58 ALR 1225.

Dogs as nuisance, 79 ALR 1060.

Cremation or crematory as a nuisance, 113 ALR 1128.

Sound truck or other forms of advertising by vehicle in streets or highways, public regulation, 121 ALR 977.

Spite fences and other spite structures, 133 ALR 691.

Golf course near highway as nuisance, 138 ALR 541; 82 ALR 2d 1183.

Rifle range, shooting gallery, military exercise, etc., use of firearms at, as nuisance, 140 ALR 415.

Offensive odors, construction and application of statute or ordinance declaring plant or establishment emitting, to be a public nuisance, 141 ALR 285.

Public market as a nuisance, 146 ALR 1407.

Medical clinic as nuisance, 153 ALR 972.

Zoning regulations as affecting question of nuisance within zoned area, 166 ALR 659.

Betting on races as nuisance, 166 ALR 1264.

Stable at race track as nuisance, 166 ALR 1264.

Riding academy as nuisance, 174 ALR 755.

Attracting people in such numbers as to obstruct access to neighboring premises, as nuisance, 2 ALR 2d 437.

Coalyard as nuisance, 8 ALR 2d 419.

Public regulation and prohibition of sound amplifiers or loud speaker broadcast in public places, 10 ALR 2d 627.

Power to find building to be a nuisance, subject to destruction, 14 ALR 2d 82.

Playing of baseball as a nuisance rendering the owner or operator of park or other premises liable for injury by ball to persons on nearby street, sidewalk or premises, 16 ALR 2d 1458.

Keeping of dogs, birds or other pets by tenant as a nuisance, 18 ALR 2d 880.

Power of municipal corporation to declare stockyards to be nuisances, 18 ALR 2d 1039.

Liability for nuisance by oil, water, or the like, flowing from well, 19 ALR 2d 1025.

Tourist or trailer camp, motor court, or motel as nuisance, 24 ALR 2d 571.

Private school as nuisance, 27 ALR 2d 1249.

House-to-house soliciting and peddling without invitation as nuisance, 35 ALR 2d 355; 77 ALR 2d 1216.

Sewage disposal plant as nuisance, 40 ALR 2d 1177.

Public dances or dance halls as nuisance, 44 ALR 2d 1331.

Municipal ordinance as rendering quarry, gravel pit, or the like, a nuisance, 47 ALR 2d 510.

Cemetery or burial ground as nuisance, 50 ALR 2d 1344.

Public dump as nuisance, 52 ALR 2d 1134.

Liability, on theory of nuisance, for injury to property inflicted by wild animal, 57 ALR 2d 250.

Nuisances by fishing, boating, bathing, or the like in inland lake, 57 ALR 2d 594.

Casting light on another's premises as nuisance, 58 ALR 2d 707.

Municipal power to abate billboards and outdoor advertising as nuisances, 58 ALR 2d 1314.

Golf course or driving range as a nuisance, 68 ALR 2d 1331.

Possession of or manner of keeping cats as a nuisance, 73 ALR 2d 1032.

Merry-go-round as nuisance, 75 ALR 2d 792.

Water sports, amusements, or exhibitions as nuisance, 80 ALR 2d 1124.

Parking lot or place as nuisance, 82 ALR 2d 413.

Double parking of motor vehicle as nuisance, 82 ALR 2d 726.

Moving of buildings on highways as nuisance, 83 ALR 2d 464.

Automobile wrecking yard or place of business as nuisance, 84 ALR 2d 653.

Oil refinery as a nuisance, 86 ALR 2d 1322.

Drive-in restaurant or cafe as nuisance, 91 ALR 2d 572.

Dairy, creamery, or milk distributing plant as nuisance, 92 ALR 2d 974.

Private residential swimming pool as nuisance, 92 ALR 2d 1283.

Drive-in theater or other outdoor dramatic or musical entertainment as nuisance, 93 ALR 2d 1171.

Keeping pigs as a nuisance, 2 ALR 3d 931.

Keeping poultry as a nuisance, 2 ALR 3d 965.

Motorbus or truck terminal as nuisance, 2 ALR 3d 1372.

Electric generating plant or transformer station as a nuisance, 4 ALR 3d 902.

42-01-02. Private nuisance—Definition.—A private nuisance is one which affects a single individual or a determinate number of persons in the enjoyment of some private right not common to the public.

Source: Civ. C. 1877, § 2049; R. C. 1895, § 5058; R. C. 1899, § 5058; R. C. 1905, § 6613; C. L. 1913, § 7230; R. C. 1943, § 42-0102.

Derivation: Cal. Civ. C., 3481.

Collateral References.

Liability, on theory of nuisance, for property damage caused by vibrations, or the like, without blasting or explosion, 79 ALR 2d 966.

Nonencroaching vegetation as a private nuisance, 83 ALR 2d 936.

42-01-03. Private nuisance—Remedies against.—The remedies against a private nuisance are:

1. A civil action; or
2. Abatement.

Source: Civ. C. 1877, § 2059; R. C. 1895, § 5068; R. C. 1899, § 5068; R. C. 1905, § 6653; C. L. 1913, § 7240; R. C. 1943, § 42-0103.

Derivation: Cal. Civ. C., 3501.

Collateral References.

Liability, on theory of nuisance, of excavators for damages to noncontiguous tract from removal of lateral support, 87 ALR 2d 710.

42-01-04. Abatement by private person.—A person injured by a private nuisance may abate it by removing, or, if necessary, destroying

the thing which constitutes the nuisance, but he shall not commit a breach of the peace or do unnecessary injury while exercising this right.

Source: Civ. C. 1877, § 2060; C. Civ. P. 1877, § 651; R. C. 1893, §§ 5069, 5920; R. C. 1899, §§ 5069, 5920; R. C. 1905, §§ 6654, 7538; C. L. 1913, §§ 7241, 8166; R. C. 1943, § 42-0104.

Derivation: Cal. Civ. C., 3502; Wait's (N. Y.) Code, 453, 454; Harston's (Cal.) Practice, 731.

42-01-05. Abatement.—When notice required.—When a private nuisance results from a mere omission of the wrongdoer and cannot be abated without entering upon his land, reasonable notice shall be given to him before entering to abate it.

Source: Civ. C. 1877, § 2061; R. C. 1893, § 5070; R. C. 1899, § 5070; R. C. 1905, § 6655; C. L. 1913, § 7242; R. C. 1943, § 42-0105.

Derivation: Cal. Civ. C., 3503.

42-01-06. Public nuisance — Definition. — A public nuisance is one which at the same time affects an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

Source: Civ. C. 1877, § 2048; R. C. 1893, § 5057; R. C. 1899, § 5057; R. C. 1905, § 6642; C. L. 1913, § 7229; R. C. 1943, § 42-0106.

Derivation: Cal. Civ. C., 3480.

Cross-References.

Airport hazards as public nuisance, see § 2-04-02.

Barberry bushes and hedges public nuisances, see § 63-04-02.

Dogs as public nuisance, see ch. 42-03.

Noxious Weeds.

Permitting noxious weeds to grow on landowner's property does not constitute a public nuisance. *Langer v. Goode*, 21 ND 462, 131 NW 258.

Unlicensed Profession.

Practicing the profession of barbering

without a certificate of registration does not constitute a public nuisance. *Richmond v. Miller*, 70 ND 157, 292 NW 603.

What Constitutes Public Nuisance.

A nuisance may be public even if it does not inflict injury to all of the public. It is sufficient if it injures any considerable number of people who may have to come in contact with it. *State ex rel. Burgum v. Hooker*, 87 NW 2d 337.

Collateral References.

Nuisance—§ 59.

39 Am. Jur., Nuisances, § 8.

66 C. J. S. Nuisances, § 2.

Liability, on theory of nuisance, of railroad for injury or damage resulting from motor vehicle striking bridge or underpass because of insufficient vertical clearance, 67 ALR 2d 1364.

42-01-07. Public nuisance—Remedies against.—The remedies against a public nuisance are:

1. Indictment;
2. Filing an information;
3. Bringing a criminal action before a county justice, who shall have authority to bind the defendant over to the district court;
4. A civil action; or
5. Abatement.

Source: Civ. C. 1877, § 2054; R. C. 1895, § 5063; R. C. 1899, § 5063; R. C. 1905, § 6648; C. L. 1913, § 7235; S. L. 1917, ch. 160, § 1; 1925 Supp., § 7235; R. C. 1943, § 42-0107.

Derivation: Cal. Civ. C., 3491.

Action by Municipality.

The municipality may bring a civil action to require the removal of a house which obstructs an area dedicated for a public use. *City of Jamestown v. Mietz*, 95 NW 2d 897.

Collateral References.

Validity of regulation of smoke and other air pollution, 78 ALR 2d 1305.

Liability, on theory of nuisance, of private promoter or operator of public fireworks exhibition or display for personal injury, death, or property damage, 81 ALR 2d 1207.

Gas company's liability on theory of nuisance, for personal injury or property damage caused by gas escaping from mains in street, 96 ALR 2d 1007.

Injury from nuisance maintained by insured as within coverage of public liability policy, 98 ALR 2d 1047.

42-01-08. Civil action—When maintainable by a private person.—A private person may maintain an action for a public nuisance if it is specially injurious to himself or his property, but not otherwise.

Source: Civ. C. 1877, § 2056; C. Civ. P. 1877, §§ 651; R. C. 1895, §§ 5065, 5920; R. C. 1899, §§ 5065, 5920; R. C. 1905, §§ 6650, 7538; C. L. 1913, §§ 7237, 7166; R. C. 1943, § 42-0108.

Derivation: Cal. Civ. C., 3493; Wait's (N. Y.) Code, 453, 454; Harston's (Cal.) Practice, 731.

42-01-09. Abatement by public officer.—A public nuisance may be abated by any public body or officer authorized thereto by law.

Source: Civ. C. 1877, § 2057; R. C. 1895, § 5066; R. C. 1899, § 5066; R. C. 1905, § 6651; C. L. 1913, § 7238; R. C. 1943, § 42-0109.

Derivation: Cal. Civ. C., 3494.

Cross-References.

Abatement by board of health, see §§ 23-05-04 to 23-05-06.

Peace officers' duty to inform against

and prosecute persons maintaining nuisances, see § 12-17-10.

Power of cities to abate nuisances, see § 40-05-01, subs. 44.

Collateral References.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection, 70 ALR 2d 852.

42-01-10. Abatement by private persons.—Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying, the thing which constitutes the nuisance, but he shall not commit a breach of the peace or do unnecessary injury while exercising this right.

Source: Civ. C. 1877, § 2058; R. C. 1895, § 5067; R. C. 1899, § 5067; R. C. 1905, § 6652; C. L. 1913, § 7239; R. C. 1943, § 42-0110.

Derivation: Cal. Civ. C., 3495.

42-01-11. Right to damages not prejudiced by abatement.—The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

Source: Civ. C. 1877, § 2052; R. C. 1895, § 5061; R. C. 1899, § 5061; R. C. 1905, § 6646; C. L. 1913, § 7233; R. C. 1913, § 42-0111.

Derivation: Cal. Civ. C., 3484.

Collateral References.

Nuisance—18-58, 71-88.

39 Am. Jur., Nuisances, §§ 128-145.
66 C. J. S. Nuisances, §§ 102-158.

42-01-12. Act done under statutory authority not deemed nuisance.—Nothing which is done or maintained under the express authority of a statute shall be deemed a nuisance.

Source: Civ. C. 1877, § 2050; R. C. 1895, § 5059; R. C. 1899, § 5059; R. C. 1905, § 6644; C. L. 1913, § 7231; R. C. 1943, § 42-0112.

Derivation: Cal. Civ. C., 3482.

Sewage Disposal.

The legislative immunity conferred upon cities by authorizing them to empty sewage into rivers did not sanction or legalize acts of a municipality in

Collateral References.

Nuisance—5, 65.
39 Am. Jur., Nuisances, §§ 204-206.
66 C. J. S. Nuisances, § 9.

42-01-13. Liability of successive owners of property for failure to abate nuisance.—Every successive owner of property who neglects to abate a continuing nuisance upon or in the use of such property created by a former owner is liable therefor in the same manner as the one who first created it.

Source: Civ. C. 1877, § 2051; R. C. 1895, § 5060; R. C. 1899, § 5060; R. C. 1905, § 6615; C. L. 1913, § 7232; R. C. 1913, § 42-0113.

Derivation: Cal. Civ. C., 3483.

Collateral References.

Contributory negligence or assumption of risk as defense to action for damages for nuisance—modern views, 73 ALR 2d 1378.

42-01-14. Lapse of time—Effect on public nuisance.—No lapse of time can legalize a public nuisance amounting to an actual obstruction of public right.

Source: Civ. C. 1877, § 2053; R. C. 1895, § 5062; R. C. 1899, § 5062; R. C. 1905, § 6647; C. L. 1913, § 7234; R. C. 1943, § 42-0114.

Derivation: Cal. Civ. C., 3490.

42-01-15. Maintaining public nuisance is a misdemeanor.—Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

Source: Pen. C. 1877, § 433; R. C. 1895, § 7289; R. C. 1899, § 7289; R. C. 1905, § 9029; C. L. 1913, § 9744; R. C. 1943, § 42-0115.

action for violation of licensing statute. Richmond v. Miller, 70 ND 157, 292 NW 633.

Collateral References.

Nuisance—89-96.
39 Am. Jur., Nuisances, §§ 178-182.
66 C. J. S. Nuisances, §§ 159-169.

Injunction.

Injunction will not lie to abate the unlicensed practice of the profession of barbering, but the remedy is a criminal

CHAPTER 42-02

ABATEMENT OF COMMON NUISANCE

Section		Section	
42-02-01	Who may bring abatement.	42-02-06	Termination of lease by owner under injunction releases property—Notice to tenant.
42-02-02	Injunction—Proceedings.	42-02-07	Evidence admissible.
42-02-03	Temporary injunction—When officers take possession of property.	42-02-08	Claim of privilege denied.
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42-02-05	When premises released.	42-02-10	Injunction—Penalty for violation.
		42-02-11	Contempt proceeding.

42-02-01. Who may bring abatement.—The attorney general, his assistant, the state's attorney, or any citizen of the county where a common nuisance exists or is maintained, may bring an action in the name of the state to abate and perpetually to enjoin the nuisance.

Source: S. L. 1911, ch. 59, § 2; 1913, ch. 172, § 2; C. L. 1913, §§ 9645, 9692; S. L. 1917, ch. 120, § 1; 1925 Supp., § 9091; R. C. 1943, § 42-0201.

Cross-References.

Cities, power to abate nuisances, see § 40-05-01, subs. 44.

Disorderly house as common nuisance, see § 12-22-27.

Gambling house or apparatus as common nuisances, see §§ 12-23-02, 12-23-03.

House used for indecent purposes as common nuisance, see § 12-22-28.

Lottery a common nuisance, see § 12-24-01.

Medicine and drug samples as nuisance, see §§ 19-04-04, 19-04-06.

Narcotic drugs or marihuana, place used for sale of, a nuisance, see § 19-03-18.

Peace officers' duty to inform against and prosecute person maintaining common nuisance, see § 12-17-10.

Prostitution, lewdness, or assignation, place kept as, a common nuisance, see § 12-22-14.

Racing animals for wager as common nuisance, see § 12-23-06.

Source of filth and cause of sickness, abatement by local board of health, see §§ 23-05-04 to 23-05-06.

Tobacco products, place of illegal sale a nuisance, see § 12-43-08.

State as Plaintiff.

When an action is brought in the name of the state ex rel. the state's attorney of a county, to restrain a nuisance, the state, as the real party in interest, is the plaintiff. The state's attorney is an officer of the state and has no personal interest in such lawsuit. If, during the action, his term expires, his successor takes his place as the prosecutor of the action for the state. There is no change of parties. State ex rel. Nedrud v. Govan, 86 NW 2d 755.

Decision under Prior Law.

A state's attorney was subject to suspension of license to practice law where he neglected to prosecute to judgment proceedings instituted by him for the abatement of nuisances created by violations of the prohibition law of this state. In re Voss, 11 ND 540, 90 NW 15.

42-02-02. Injunction—Proceedings.—If the action is brought by a citizen, he shall give a bond in an amount sufficient to cover the costs of such action as the court may direct. An injunction shall be granted at the commencement of an action for the abatement of a common nuisance in the usual manner of granting injunctions, except that the affidavit or complaint, or both, may be made by the state's attorney, the attorney general, or his assistant, upon information and belief.

When an injunction, either temporary or permanent, has been granted under the provisions of this section, it shall be binding on the defendant or defendants throughout the entire state.

Source: S. L. 1911, ch. 59, §§2, 7; 1913, ch. 172, §2; C. L. 1913, §§9645, 9650, 9692; S. L. 1923, ch. 258, §1; 1925 Supp., §10177; R. C. 1943, §42-0202.

Constitutionality.

Provision of this statute for the granting of a temporary injunction at the commencement of an action to abate a bawdyhouse nuisance is not unconstitutional as depriving a person of life, liberty, or property without due process of law. State ex rel. Herigstad v. McCray, 48 ND 625, 186 NW 280.

Elements of Offense.

The offense of maintaining a nuisance consists in keeping the place where the forbidden acts are committed. State v. Thoenke, 11 ND 386, 92 NW 480.

Illegal Sale of Liquor.

The place where liquor is sold in violation of law may be abated as a nuisance. State v. Fraser, 1 ND 425, 48 NW 343; State v. Dellaire, 4 ND 312, 60 NW 953; State v. Markson, 7 ND 155, 73 NW 82; State v. Rozum, 8 ND 548, 80 NW 477, distinguished in 29 ND 51, 149 NW 965; State v. McGruer, 9 ND 566, 84 NW 363, distinguished in 13 ND 122, 99 NW 1077; State v. Donovan, 10 ND 610, 88 NW 717, distinguished in 21 ND 27, 127 NW 1043.

In an action to abate a liquor nuisance, it was held that the finding of liquor in defendant's possession was not presumptive evidence that the same was to be unlawfully sold. State ex rel. Kelly v. Nelson, 13 ND 122, 99 NW 1077.

Jurisdiction.

A court of equity has power to issue an injunction pendente lite in an action to abate a nuisance under this chapter, upon obtaining jurisdiction of the subject matter. State v. Simpson, 78 ND 360, 49 NW 2d 777.

Sufficiency of Affidavit.

An affidavit for a search warrant made by the state's attorney upon information and belief is insufficient to authorize search of premises believed to be

used for sale of intoxicating liquors. State ex rel. Register v. McGaley, 12 ND 535, 97 NW 865.

Sufficiency of Complaint.

When it is charged that intoxicating liquors were sold on premises, it is not necessary to state the names of the parties to whom such sales were made. State v. Dellaire, 4 ND 312, 60 NW 953.

Under the prohibitory law, in an action for the abatement of a liquor nuisance, an injunction might issue at the commencement of the action upon a complaint alone, when made by the state's attorney and verified by him upon information and belief. State ex rel. Register v. Patterson, 13 ND 70, 99 NW 67.

The court is not authorized to direct the abatement of a liquor nuisance where the indictment or information fails to particularly describe the place where such nuisance is maintained. State v. Ildvedsen, 20 ND 62, 126 NW 489.

Decision under Prior Law.

Where the prosecution for keeping and maintaining a common nuisance is only against the person, and where the state does not seek an order of abatement of the nuisance, a criminal information charging the keeping of the place where the forbidden acts are committed is sufficient. State v. Kruse, 19 ND 203, 124 NW 385.

Collateral References.

Constitutionality of statute conferring on chancery courts power to abate public nuisances, 5 ALR 1474; 22 ALR 542; 75 ALR 1298.

Right to enjoin threatened or anticipated nuisance, 7 ALR 749; 26 ALR 937; 32 ALR 721; 55 ALR 880.

Bowling alleys, right to enjoin, 20 ALR 1482; 29 ALR 41; 53 ALR 143; 72 ALR 1339.

Doctrine of comparative injury in suit to enjoin nuisance, 61 ALR 924.

Judgment abating nuisance as affecting owner not served with process, 63 ALR 698.

Street or highway, right, as between state and county or municipality, to

maintain action to abate public nuisance in, 65 ALR 699.

Injunction against nuisance by dust, 24 ALR 2d 194.

Joinder, in injunction action to restrain or abate nuisance, of persons contributing thereto through separate and independent acts, 45 ALR 2d 1284.

Practice of extracting money and nuisance or ground for injunction, ALR 2d 848.

Saloons or taverns as nuisance, ALR 3d 989.

42-02-03. Temporary injunction—When officers take possession of property.—If, at the time of granting the temporary injunction, affidavit shall be presented to the court or judge, stating or showing that acts are being committed, contrary to law, upon the premises where said nuisance is located, the court or judge must issue his writ commanding the officer serving said writ of injunction, at the time of service, to take possession and custody of any articles or property used or employed contrary to law. The officer shall take and hold possession of such property until final judgment is entered, or until the possession of such property shall be disposed of by an order of the court or judge upon a hearing had before it for such purpose. The expense for such holding shall be taxed as a part of the costs in the action.

Source: Pen. C. 1877, § 395; R. C. 1895, § 7239; R. C. 1899, § 7239; R. C. 1905, § 8976; S. L. 1913, ch. 172, § 3; C. L. 1913, § 9682, 9693; R. C. 1943, § 42-0203.

Constitutionality.

The statute which provides for the granting of a temporary injunction at the commencement of an action to abate a bawdyhouse nuisance is not unconstitutional as depriving a person of life, liberty, or property without due process of law. State ex rel. Herigstad v. McCray, 48 ND 625, 186 NW 280, 22 ALR 530.

* The statute which directs the seizure and retention of property alleged to be used as a bawdyhouse if the seizure is without notice and without a hearing to determine whether such place is a nuisance in fact, is unconstitutional as a taking of property without due process, the violation of the security of persons in their own houses, and as an unreasonable seizure. State ex rel. Herigstad v. McCray, 48 ND 625, 186 NW 280, 22 ALR 530; Simpson v. District Court of Ward County, 77 ND 189, 42 NW 2d 2.

42-02-04. Common nuisance—Abatement.—If a place is found, upon the judgment of a jury, court, or judge having jurisdiction, to be a common nuisance, the sheriff, his deputy, or any constable of the proper county, or the police or marshal of any city or village where the nuisance is located, shall be directed to close and abate such place by taking possession thereof, together with all personal property used in keeping and maintaining such nuisance, and to close the same against use by anyone, and to keep it closed for a period of one year from the date of the judgment decreeing it to be a common nuisance. After judgment, such officer publicly shall destroy such personal property used in keeping and maintaining the nuisance. Any person breaking open said building, erection, or place, or using the premises so ordered to be closed, shall be punished for contempt as provided by this chapter.

Source: S. L. 1885, ch. 121, § 5; R. C. 1895, § 7626; R. C. 1899, § 7626; R. C. 1905, § 9396; S. L. 1911, ch. 59, § 1; 1913, ch. 172, § 1; C. L. 1913, §§ 9644, 9691, 10177; S. L. 1917, ch. 120, § 1; 1923, ch. 258, § 1; 1925 Supp., §§ 9691, 10177; R. C. 1943, § 42-0204.

Death of Defendant.

The death of the person charged with maintaining a common nuisance abates the nuisance and the cause of action does not survive. State ex rel. Kelly v. McMaster, 13 ND 58, 99 NW 58.

Destruction of Personal Property.

In an action for the discontinuance of a bawdyhouse as a common nuisance, the court has no inherent authority to order the destruction of personal property kept and used in connection with its operation and maintenance. State ex rel. McCurdy v. Bennett, 27 ND 465, 163 NW 1063.

To seize and destroy personal property found in a disorderly house also used as the home of the defendant there must be evidence to show what personal property was used in the keeping and maintaining of the nuisance and a judicial

determination thereon. State ex rel. Halvorson v. Simpson, 78 ND 440, 49 NW 2d 790.

Dwelling House.

The provisions of this section and section 42-02-03 for the abatement of a bawdyhouse nuisance do not authorize the taking possession of and closing a dwelling house used in keeping and maintaining such nuisance until it is found upon the judgment of a jury, court, or judge having jurisdiction to be a common nuisance. Simpson v. District Court of Ward County, Fifth Judicial Dist., 77 ND 189, 42 NW 2d 213.

Decision under Prior Law.

A place of business keeping for sale and selling intoxicating liquor in the state of North Dakota in violation of the prohibitory liquor law (Laws 1890, ch. 110, § 13) was a common nuisance, whether such liquor was or was not drunk by purchasers at such place of business, with the knowledge and consent of the agent in charge of such place of business. State ex rel. Bartlett v. Fraser, 1 ND 425, 48 NW 343.

42-02-05. When premises released.—If the proceeding is an action either at law or in equity and a bond is given and the costs therein are paid, the premises shall be released at the end of one year from the date of the service of the temporary injunctive order, if in an equity case, or from the closing of the premises, if in a criminal case. In the meantime, and in either form of action, the premises where such nuisance was kept and maintained shall be regarded as being under a restraining order of the court, a violation of which will subject the violator to punishment for contempt. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject under any statute or law.

Source: S. L. 1885, ch. 121, § 5; R. C. 1895, § 7626; R. C. 1899, § 7626; R. C. 1905, § 9396; S. L. 1913, ch. 172, § 4; C. L. 1913, §§ 9694, 10177; S. L. 1923, ch. 258, § 1; 1925 Supp., § 10177; R. C. 1943, § 42-0205.

42-02-06. Termination of lease by owner under injunction releases property.—Notice to tenant.—When leasehold premises are closed under an injunctive order or have been adjudged to be a nuisance, the owner thereof shall have the right to terminate the lease by giving three days' notice thereof in writing to the tenant, and after giving such notice, if the owner shall prove to the court that he was without fault, and had not knowingly nor negligently permitted the keeping or maintaining of

the nuisance complained of, the premises shall be turned over to the owner upon the order of the court. The release of the property shall be upon the condition that the nuisance shall not be continued and that the return of the property shall not release any lien upon said property occasioned by any prosecution of the tenant. If the owner appears and pays all costs of the proceedings and files a bond with sureties to be approved by the court, conditioned that he immediately will abate said nuisance and will prevent it from being established or kept therein within the period of one year thereafter, the court or the judge, if satisfied of the owner's good faith, may order that the premises taken and closed be released and the said order of abatement canceled so far as it may relate to said property.

Source: S. L. 1885, ch. 121, § 5; R. C. 1895, § 7626; R. C. 1899, § 7626; R. C. 1905, § 9396; S. L. 1913, ch. 172, § 4; C. L. 1913, §§ 9694, 10177; S. L. 1923, ch. 258, § 1; 1925 Supp., § 10177; R. C. 1943, § 42-0206.

Discretion of Court.

It is discretionary with the trial court whether the building in which a nuisance was maintained by selling liquors therein, of which the owner had knowledge, shall be released to the owner after it is closed by appropriate proceedings. *State ex rel. Heffron v. Bleth*, 21 ND 27, 127 NW 1043.

Lien for Fines and Costs.

A lien for fines and costs is enforceable on premises on which a nuisance is unlawfully maintained, where the use is knowingly permitted by the owner. *Larson v. Christianson*, 14 ND 476, 106 NW 51.

Protection of Owner's Rights.

If, after a judgment is rendered against the defendant tenant on the issue of maintaining a nuisance, the owner of the premises can show that he is without fault, his rights are protected. *State ex rel. Halvorson v. Simpson*, 78 ND 440, 49 NW 2d 790.

Decision under Prior Law.

In an action to abate a liquor nuisance, where the trial court was satisfied of the good faith of the owner of the building in intending to abate the nuisance, the mere fact that the owner of the building was aware of the maintenance of the nuisance, by his tenant, before the commencement of the abatement proceedings did not necessarily deprive the owner of the right to have the premises surrendered to him. *State ex rel. Heffron v. Bleth*, 21 ND 27, 127 NW 1043.

42-02-07. Evidence admissible.—In a prosecution under this chapter in a civil proceeding, evidence of the general reputation of the house, building, room, or place designated in the complaint shall be admissible for the purpose of proving the existence of a common nuisance. Proof of the fact that any person has pleaded guilty to violation of the provisions of any city ordinance or any other law of the land enacted to prevent a common nuisance also is admissible, if it can be shown further that such person, when pleading guilty, was or had been, at the time and place mentioned in the complaint in the action then pending before the court, a frequenter or inmate of such house, building, room, or place, and such proof shall be deemed prima facie evidence of the guilt of the defendant.

Source: S. L. 1911, ch. 59, § 8; 1913, ch. 172, § 8; C. L. 1913, §§ 9651, 9695; R. C. 1913, § 42-0207.

Absence of Defendant.

The fact that the proprietress of the house was not actually present in the

room when the lewd conversation was carried on does not render such testimony incompetent to show the character of the house. *State v. Simpson*, 78 ND 360, 49 NW 2d 777.

Circumstantial Evidence.

If the facts and circumstances in the evidence are such that the clear inference therefrom is that intercourse was practiced on the premises, that is sufficient even if no particular act is shown. *State v. Simpson*, 78 ND 360, 49 NW 2d 777.

Conviction of Inmates.

Evidence of conviction of inmates of a bawdyhouse on moral charges is admis-

sible in proceedings for the abatement of the nuisance as bearing on the character of the house. *State v. Simpson*, 78 ND 360, 49 NW 2d 777.

General Reputation.

To prove the character of a house alleged to be a disorderly house, the general reputation of such house is admissible. *State v. Simpson*, 78 ND 360, 49 NW 2d 777.

Collateral References.

Admissibility, in prosecution for maintaining liquor nuisance, of evidence of general reputation of premises, 68 ALR 2d 1300.

42-02-08. Claim of privilege denied.—No person shall be excused from giving any testimony or evidence upon any investigation or proceeding for a violation of this chapter upon the ground that such testimony would tend to convict him of a crime, but such testimony or evidence shall not be received against him upon any criminal investigation or proceeding.

Source: Pen. C. 1877, § 392; R. C. ch. 172, § 8; C. L. 1913, §§ 9651, 9659, 1895, § 7236; R. C. 1899, § 7236; R. C. 9698; S. L. 1919, ch. 133, § 2; 1925 Supp., § 8973; S. L. 1911, ch. 59, § 8; 1913, Supp., § 9674a3; R. C. 1943, § 42-0208.

42-02-09. Reasonable attorney's fees.—In case judgment is rendered in favor of the plaintiff in any action brought under the provisions of section 42-02-02, the court or judge rendering it also shall render judgment for a reasonable attorney's fee in favor of the plaintiff and against the defendants therein. Such attorney's fee shall be taxed and collected as other costs in the action, and when collected shall be paid to the attorney for the plaintiff therein. If such attorney is the attorney general or state's attorney, such attorney's fee shall be paid into the county treasury and credited to the general fund of the county.

Source: S. L. 1911, ch. 59, § 2; 1913, ch. 172, § 2; C. L. 1913, §§ 9645, 9692; R. C. 1943, § 42-0209.

42-02-10. Injunction—Penalty for violation.—If the terms of an injunction for the abatement of a common nuisance are violated in any place in the state of North Dakota, the offending party shall be punished for contempt by a fine of not less than twenty-five dollars nor more than one thousand dollars, and by imprisonment in the county jail for not more than one year.

Source: S. L. 1911, ch. 59, §§ 2, 6, 7; 1913, ch. 172, §§ 2, 6, 7; C. L. 1913, §§ 9645, 9649, 9650, 9692, 9696, 9697; S. L. 1923, ch. 258, § 1; 1925 Supp., § 10177; R. C. 1943, § 42-0210.

In General.

The violation of an injunction abating a liquor nuisance is punishable by a contempt proceeding. *State v. Markuson*, 5 ND 147, 64 NW 934.

42-02-11. Contempt proceeding.—A contempt proceeding arising out of the violation of any injunction granted under the provisions of this chapter shall be conducted in the manner prescribed for the conduct of such proceeding in title 27, Judicial Branch of Government.

Source: S. L. 1911, ch. 59, § 5; 1913, ex rel. Harvey v. Newton, 16 ND 151, ch. 172, § 5; C. L. 1913, §§ 9648, 9695; 112 NW 52.
R. C. 1943, § 42-0211.

Decision under Prior Law.

Sufficiency of Affidavit.

An affidavit upon information and belief is insufficient upon which to base constructive contempt proceedings. State

The procedure in contempt trials did not govern in cases arising under statute relating to intoxicating liquors. State v. Massey, 10 ND 154, 86 NW 225.

CHAPTER 11-28 COUNTY PARKS AND RECREATIONAL AREAS *

Section		Section	
11-28-01	Board of county park commissioners — Appointment by county commissioners — Number.	11-28-10	Police, constables, sheriff to enforce chapter.
11-28-02	Eligibility for appointment—Term—Vacancy—Compensation.	11-28-11	Declaration of power—Saving clause.
11-28-03	County auditor, county treasurer, and state's attorney shall serve board.	11-28-12	Joint county park district.
11-28-04	Organization of board—Quorum, meetings.	11-28-13	Compensation — Vacancy — Meetings.
11-28-05	Powers and duties of the board of park commissioners.	11-28-14	Secretary and treasurer.
11-28-06	Tax levy by board of county commissioners.	11-28-15	Organization—Quorum.
11-28-07	Auditing and payment of bills.	11-28-16	Power and duties of board.
11-28-08	Publication of rules, regulations, and proceedings.	11-28-17	District budget—Tax levy—Election.
11-28-09	Violation of any rule or regulation a misdemeanor—Penalty—Injunction.	11-28-18	Auditing and payment of bills.
		11-28-19	Publication of rules, regulations, and proceedings.
		11-28-20	Violation of rules—Penalty.
		11-28-21	Police officer to enforce act.
		11-28-22	Declaration of power.

*Only §§ 11-28-05, 11-28-12, and 11-28-16 are reproduced

11-28-05. Powers and duties of the board of park commissioners.—
The board of county park commissioners shall have the power and it shall be its duty to:

1. Sue and be sued in the name of the board;
2. Accept on behalf of the county any and all lands and waters and any and all interests, easements, or rights therein, and any gifts, grants, donations, or trusts in money or property, or other assistance, financial or otherwise, from federal, state, municipal, and other public or private sources for park and recreational purposes; and accept and assume the supervision, control, and management of any privately owned property or recreational area, when the conditions of the offer for its public use are such as in the judgment of the board will be conducive to the best interests of the people of the county and state;
3. Co-operate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local co-operation requirements in connection with any project involving the construction, improvement, operation, maintenance, conservation, or use of any park or recreational area under the jurisdiction, supervision, control, and management of the board;
4. Regulate, supervise, control, and manage all areas of land and water owned or held by the county or which may be, under written agreement, placed by an individual, a corporation, the federal, state or a municipal government or any department or agency thereof, under the jurisdiction, supervision, control, and management of the board of county park commissioners for park or recreational purposes;
5. Promulgate, publish, and impose rules and regulations concerning the uses to which such land and water areas may be put, including the regulation or prohibition of the construction, establishment, or maintenance therein or thereon or within one-half mile thereof of any concession, dance hall, dance parlor, dance pavilion, soft or hard drink parlor or bar, and of any and all establishments of every name, nature, or description which may, in the judgment of the board, be unsightly, noisome, improper, inappropriate, or detrimental to the social usages of the area or areas for park and recreational purposes;
6. Regulate, supervise, control, and manage all such land and water areas including all lakes, streams and ponds and all artificial bodies of water created by any water development or water conservation or flood control project of the county, state, or federal government not under the jurisdiction, supervision, or control of any other board, department, or governing body;
7. Exercise full police power, supervision, control, and management over such areas and the adjoining and adjacent lands within

one-half mile thereof, and by regulations duly promulgated, published, and imposed regulate or prohibit the construction, establishment, maintenance, or operation within one-half mile of any such land or water area of any dance hall, dance parlor, dance pavilion, soft or hard drink parlor or bar, and any all establishments of every name, nature, and description which may, in the judgment of the board, be unsightly, noisome, improper, inappropriate, or detrimental to the social usages of any land area or body of water so developed or created. The authority provided by these subsections is intended to be exercised for the protection of the health, safety, good morals, and general welfare of the people of the county and state to the fullest extent permissible under the police power of the county and state;

8. Prevent the pollution, contamination, or other misuse of any water resource, stream or body of water under its jurisdiction, supervision, control, or management;
9. Certify to the county auditor the amount of money necessary to meet the estimated expenses and costs of properly conducting its business and activities, including the operation, maintenance, and improvement of the park and recreational areas under its jurisdiction, supervision, control, or management for the ensuing year, such certificate to be filed with the county auditor not later than the first day of July each year. Such certificate shall be accompanied by an itemized budget statement showing the detailed expenditure program, as nearly as possible, of the board for the ensuing year;
10. Do all the things reasonably necessary and proper to preserve the benefits accruing from the park and recreational areas under the jurisdiction, supervision, control, and management of the board of county park commissioners;
11. To exercise the power of eminent domain in the manner provided by the title Judicial Remedies for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the control of the shores of any lake and to protect the right of ingress and egress therefrom and to provide recreational areas or facilities.

Source: S. L. 1953, ch. 116, § 5; R. C. 1943, 1957 Supp., § 11-2805; S. L. 1959, ch. 124, § 1.

1973 SUPPLEMENT

- 11-28-12. Joint county park district.—Two or more contiguous or adjacent counties may form a joint county park district by resolution duly adopted by the board of county commissioners of each county affected. Contiguity of counties shall not be affected by intervening waters. The powers of such joint county park district shall be exercised by a board of park commissioners chosen as follows:

The board of county commissioners of each county comprising such joint county park district shall select two members of such joint board, of whom one shall be a member of such board of county commissioners, and such joint board shall select one additional member at large. Each member of the joint park board shall serve for a term of two years and until his successor is selected and qualified.

Source: N.D.C.C.; S. L. 1963, ch. 115, § 1.

11-28-16. Power and duties of board.—The board of joint park commissioners, shall have the following powers and duties:

1. To establish and maintain within the district public parks, playgrounds, and recreational areas;
2. To sue and be sued in the name of the district;
3. To exercise the power of eminent domain in the manner provided by the title Judicial Remedies for the purpose of acquiring and securing any right, title, interest, estate, or easement necessary to carry out the duties imposed by sections 11-28-12 through 11-28-22, and particularly to acquire the necessary rights in land for the control of the shores of any lake and to protect the right of ingress and egress therefrom and to provide recreational areas or facilities;
4. To accept in behalf of the district any and all lands and waters and any and all interest, easement, or right therein and any gifts, grants, donations, or trusts in money or property, or other assistance, financial, or otherwise, from federal, state, municipal, and other public or private sources for park and recreational purposes; and accept and assume the supervision, control, and management of any privately owned property or recreational area, when the conditions of the offer for its public use are such as in the judgment of the board will be conducive to the best interests of the people of the district and state;
5. To co-operate and contract with the state or federal government or any department or agency thereof in furnishing assurances and meeting local co-operation requirements in connection with any project involving the construction, improvement, operation, maintenance, conservation, or use of any park or recreational area under the supervision, jurisdiction, control, and management of the board;
6. To regulate, supervise, control, and manage all areas of land and water owned or held by the district or which may be, under written agreement, placed by an individual, a corporation, the federal, state, or a municipal government or any department or agency thereof, under the jurisdiction, supervision, control, and management of such board for park or recreational purposes;
7. To promulgate, publish, and impose rules and regulations concerning the uses to which such land and water areas may be put, including the regulation or prohibition of the construction, establishment, or maintenance therein or thereon or within one-half mile thereof of any concession, dance hall,

dance pavilion, establishments selling soft drinks or alcoholic beverages, and of any and all establishments of every name, nature, or description which may, in the judgment of the board, be unsightly, noisome, improper, inappropriate, or detrimental to the social usages of the area or areas for park and recreational uses;

8. To regulate, supervise, control, and manage all such land and water areas including all lakes, streams, and ponds and all artificial bodies of water created by any water development or water conservation or flood control project of the county, state, or federal government not under the jurisdiction, supervision, or control of any other board, department, or governing body;
9. To prevent the pollution, contamination, or other misuse of any water resource, stream or body of water under its jurisdiction, supervision, control, or management;
10. To maintain an office for meetings of the board and for the use of its secretary and treasurer;
11. To levy a tax, when authorized by the electors of the affected counties, annually on each dollar of taxable valuation in the district for the payment of the expenses of the district, including, but not limited to, per diem, mileage, and other expenses of the members of the board and other operating expenses, including the payment of obligations incurred under subsection twelve hereof. All moneys collected shall be paid over to the treasurer of the joint county park district, who shall deposit the funds in the Bank of North Dakota;
12. To enter into contracts with the United States of America, or any department or agency thereof, and with public corporations of North Dakota for the development of any land or water resource within the district;
13. To employ a superintendent of the park area and to employ such other assistance as may be necessary to carry out the purposes of sections 11-28-12 through 11-28-22;
14. To lease lands owned or controlled by the board for residential, camping, concession, and other purposes upon such terms and for such periods as the board may determine proper, and to deposit and expend any income therefrom the same as other moneys belonging to the district;
15. To provide by contract or otherwise for the relocation of highways, public utilities, railroad lines, or other structures as may be reasonably necessary in developing and maintaining the park facilities;
16. To do all the things necessary and proper to preserve the benefits accruing from the park and recreational areas under the jurisdiction, supervision, control, and management of the board of county park commissioners.

The authority provided by these subsections is intended to be exercised for the protection of health, safety, and good morals of the people of the district and state to the fullest extent permissible under the police power of the state.

Source: S. L. 1957, ch. 112, § 5; R. C. 1943, 1957 Supp., § 11-2816.

CHAPTER 23-11

HOUSING AUTHORITIES LAW

Section		Section	
23-11-01	Definitions.	23-11-17	Eminent domain—Exercise of power.
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23-11-01. Definitions.—In this chapter, unless the context or subject matter otherwise requires:

1. "Authority" or "housing authority" shall mean any of the public corporations created by section 23-11-02;
2. "City" shall mean any city having a population of more than five thousand inhabitants according to the last federal census and "the city" shall mean the particular city for which a particular housing authority is created, except that it shall not mean a city which has agreed to or will so elect to participate in a county housing authority pursuant to section 54-10-03, provided that any city with less than five thousand population which has an activated city housing authority prior to July 1, 1971, shall be included within this definition;

so elect to participate in a county housing authority pursuant to section 54-40-08;

3. "County" shall mean any county in this state and "the county" shall mean the particular county for which a particular housing authority is created;
4. "Governing body" shall mean, in the case of a city, the city council, or the board of city commissioners, as the case may be, and in the case of a county, the board of county commissioners;
5. "Mayor" shall mean the mayor of the city or the president of the board of city commissioners, as the case may be;
6. "Auditor" shall mean the city auditor or the county auditor, as the case may be;
7. "Area of operation" shall include:
 - a. In the case of a housing authority of a city having a population of less than fifteen thousand inhabitants, such city and the area within five miles of the territorial boundaries thereof but shall not include any area which lies within the territorial boundaries of another city;
 - b. In the case of a housing authority of a city having a population of fifteen thousand inhabitants or more, such city and an area within ten miles of such territorial boundaries thereof, but shall not include any area which lies within the territorial boundaries of another city; and
 - c. In the case of a housing authority of a county, all of the county except that portion which lies within the territorial boundaries of any city;
8. "Federal government" shall include the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America;
9. "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary facilities, or by reason of any combination of these factors, are detrimental to safety, health, and morals;
10. "Housing project" may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith and shall mean any work or undertaking:
 - a. To demolish, clear, or remove buildings from any slum area, and such work or undertaking may embrace the adaption of such area to public purposes, including parks or other recreational or community purposes;
 - b. To provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income, and may include buildings, land, equipment, facilities, and other real or personal property for necessary,

convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparations, gardening, administrative, community, health, recreational, educational, welfare, or other purposes; or

- c. To accomplish a combination of any of the foregoing projects;
11. "Persons of low income" shall mean persons or families who lack the amount of income which is necessary, as determined by the authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding;
 12. "Bonds" shall mean any bonds, notes, certificates, debentures, or other obligations issued by an authority pursuant to any provision of this chapter;
 13. "Real property" shall include all lands, including improvements and fixtures thereon and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens; and
 14. "Obligee of the authority" or "obligee" shall include any bondholder, trustee for any bondholders, or lessor demising to the authority property used in connection with a housing project, or any assignee of such lessor's interest, or of any part thereof, and the federal government when it is a party to any contract with the authority.

Source: S. L. 1937, ch. 102, § 3; R. C. 1943, § 23-1101; S. L. 1965, ch. 192, § 1.

Cross-Reference.

Word defined by statute always has same meaning, see § 1-01-09.

Constitutionality.

Favored classification of "persons of low income" is neither artificial, capricious, arbitrary, nor unreasonable and does not violate state constitutional provision prohibiting granting of special privileges and immunities to any citizen or class of citizens. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849; *Fradet v. City of Southwest Fargo*, 79 ND 799, 59 NW 2d 871.

Area of Operation.

Legislature intended that all areas of

population other than cities of more than five thousand inhabitants were to be included within area of operation of county housing authority. *Fradet v. City of Southwest Fargo*, 79 ND 799, 59 NW 2d 871.

Public Purpose.

The building of low cost public housing for veterans is for a public purpose. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

Collateral References.

Health—14, 32.
42 Am. Jur., Public Housing Laws, § 1 et seq.
39 C. J. S. Health, § 22 (c).

Sunbility, and liability, for torts, of public housing authority, 61 ALR 2d 1246.

23-11-02. Creation of housing authorities.—In each city and in each county of the state, there is created a public body corporate and politic to be known as the "housing authority" of the city or county, as the

case may be. Such authority shall not transact any business nor exercise any powers granted by this chapter until the governing body of the city or of the county, as the case may be, by proper resolution, shall declare that there is need for an authority to function in such city or county. The determination as to whether there is such need may be made by the governing body on its own motion and shall be made upon filing of a petition signed by twenty-five residents of the city or county, as the case may be, asserting that there is need for such authority to function in such city or county and requesting that the governing body so declare.

Source: S. L. 1937, ch. 102, § 4; R. C. 1943, § 23-1102.

Determination of Need.

Necessity of housing authority can be determined by board of county commissioners on its own motion, based only on good faith belief that there is such a need. *Fradet v. City of Southwest Fargo*, 79 ND 799, 59 NW 2d 871.

Investigation by Board.

Fact that board of county commissioners did not make an independent investi-

gation before passing resolution declaring need for housing authority did not mean that their determination was arbitrary, and their action in passing the resolution was not void. *Fradet v. City of Southwest Fargo*, 79 ND 799, 59 NW 2d 871.

Public Corporation.

The housing authority is a public corporation for public purposes. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

23-11-03. When resolution declaring housing authority to be necessary shall be adopted.—The governing body of the city or county, as the case may be, shall adopt a resolution declaring that there is need for a housing authority in the city or county if it finds:

1. That unsanitary or unsafe inhabited dwelling accommodations exist in the city or county; or
2. That there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford to pay.

In determining whether dwelling accommodations are unsafe or unsanitary, said governing body may take into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space, and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities, and the extent to which conditions which endanger life or property by fire or other causes exist in such buildings.

Source: S. L. 1937, ch. 102, § 4; R. C. 1943, § 23-1103.

Basis of Resolution.

Favorable action on resolution declaring need for housing authority is to be

taken only if it is found that unsanitary or unsafe dwellings exist, or that there is a shortage of safe or sanitary dwellings. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

23-11-04. When authority conclusively deemed established.—In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority shall be con-

clusively deemed to have become established and authorized to transact business and exercise its powers hereunder upon proof of the adoption of a resolution by the governing body of the city or county declaring the need for the authority. Such resolution shall be deemed sufficient if it declares that there is need for an authority and finds that either or both of the conditions enumerated in section 23-11-03 exist in the city or county, as the case may be. A copy of the resolution, duly certified by the auditor of the city or county, shall be admissible in evidence in any suit, action, or proceeding.

Source: S. L. 1937, ch. 102, § 4; R. C. 1943, § 23-1104.

Finding of Fact.

Proof of the resolution conclusively showed that the necessary facts were found by the governing body. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

Investigation Unnecessary.

Fact that members of board of county commissioners did not make an independent investigation did not mean that their determination was arbitrary, or that their action in passing the resolution was void. *Fradet v. City of Southwest Fargo*, 79 ND 764, 59 NW 2d 871.

23-11-05. Commissioners of authority—Appointment, qualifications, tenure, compensation.—When the governing body of a city adopts a resolution, declaring there is need for a housing authority, it promptly shall notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for said city. When the governing body of a county adopts a resolution declaring there is need for a housing authority, said body shall appoint five persons as commissioners of the authority created for said county. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment, and thereafter, each commissioner shall be appointed for a term of office of five years except that all vacancies shall be filled for the unexpired term. No commissioner of an authority may be an officer or employee of the city or county for which the authority is created. A commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the auditor of the city or county, as the case may be, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. A commissioner may receive ten dollars a day for each day necessarily devoted to the work of his office and he shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. The per diem compensation provided for in this section shall not exceed three hundred dollars in any one fiscal year.

Source: S. L. 1937, ch. 102, § 5; R. C. 1943, § 23-1105; S. L. 1969, ch. 256, § 1.

23-11-06. Chairman of commissioners of authority, appointment—Vice-chairman, appointment—Quorum—Majority vote necessary.—The

mayor in the case of an authority of a city, or the governing body in the case of an authority of a county, shall designate which of the commissioners appointed shall be the first chairman. When the office of the chairman of the authority thereafter becomes vacant, the commissioners of the authority shall select one of their number as chairman. The commissioners also shall select one of their number as vice-chairman. Three commissioners shall constitute a quorum for the conduct of the business of the authority. Action may be taken by the authority upon a vote of a majority of the commissioners present unless the bylaws of the authority require a larger number.

Source: S. L. 1937, ch. 102, § 5; R. C. 1943, § 23-1106.

23-11-07. Powers of commissioners of authority.—The powers of each authority shall be vested in the commissioners of the authority. The authority may delegate to one or more of its agents or employees such powers and duties as it deems proper.

Source: S. L. 1937, ch. 102, § 5; R. C. 1943, § 23-1107.

23-11-08. Employees of authority.—Duty of city and state's attorney—Legal assistants.—The commissioners of an authority may employ a secretary who shall be its executive director, and such technical experts, and other officers, agents, and employees, permanent and temporary, as it may require. The commissioners shall determine the qualifications of all persons employed and their duties and compensation. For such legal service as may be required, the commissioners may call upon the city attorney or the state's attorney, or they may employ counsel or a legal staff for the authority.

Source: S. L. 1937, ch. 102, § 5; R. C. 1943, § 23-1108.

23-11-09. Commissioner or employee shall not have interest in housing project or property to be used.—No commissioner or employee of an authority shall acquire any direct or indirect interest in any housing project or in any property included or planned to be included in any project, nor shall he have any direct or indirect interest in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls a direct or indirect interest in any property included or planned to be included in any housing project, he immediately shall disclose the same in writing to the authority, and such disclosure shall be entered upon the minutes of the authority. Failure to disclose such interest shall constitute misconduct in office.

Source: S. L. 1937, ch. 102, § 6; R. C. 1943, § 23-1109.

23-11-10. Removal of commissioners.—A commissioner of an authority may be removed by the mayor, or in the case of an authority for

a county, by the governing body of the county, for inefficiency, neglect of duty, or misconduct in office. He shall be removed, however, only after he shall have had an opportunity to be heard upon the charges in person or by counsel. A copy of the charges shall be served upon the commissioner at least ten days before the date fixed for the hearing. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the auditor of the city or county, as the case may be.

Source: S. L. 1937, ch. 102, § 7; R. C. 1943, § 23-1110.

23-11-11. Powers of authority.—An authority shall have the following powers and duties:

1. To exercise public and essential governmental functions;
2. To sue and be sued;
3. Repealed by S. L. 1973, ch. 80, § 21.
4. To have perpetual succession;
5. To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority;
6. To make, amend, and repeal such bylaws, rules, and regulations, not inconsistent with the provisions of this chapter, as are necessary to carry into effect the powers and purposes of the authority;
7. To prepare, carry out, acquire, lease, and operate housing projects within its area of operation;
8. To provide for the construction, reconstruction, improvement, alteration, or repair of any housing project, or any part thereof, within its area of operation;
9. To arrange or contract for the furnishing by any person or any public or private agency of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof;
10. To include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor shall comply with requirements as to minimum wages and maximum hours of labor and any conditions which the federal government may have attached to its financial aid of the project;
11. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor;
12. To own, hold, and improve real or personal property;
13. To purchase, lease, obtain options upon, or acquire, by gift, grant, bequest, devise, or otherwise, any real or personal property or any interest therein;
14. To acquire real property by the exercise of the power of eminent domain;

15. To sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property, or any interest therein;
16. To insure, or provide for the insurance of, any real or personal property, or any operation of the authority, against any risks or hazards;
17. To procure insurance or guaranties from the federal government of the payment of any debts, or parts thereof, secured by mortgages on any property included in any of its housing projects, whether the debts were incurred by the authority or not;
18. To invest any funds held by it in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control;
19. To purchase its bonds at a price not more than the principal amount thereof and accrued interest, and all bonds so purchased shall be canceled;
20. To investigate, in its area of operation, living, dwelling, and housing conditions and the means and methods of improving the same;
21. To determine, within its area of operation, where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income;
22. To make studies and recommendations relating to the problem of clearing, replanning, and reconstructing the slum areas within its area of operation and the problem of providing dwelling accommodations for the persons of low income, and to cooperate with the city, county, or state, or any political subdivision thereof, in any action taken in connection with such problems;
23. To engage in research, studies, and experimentation on the subject of housing within its area of operation;
24. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;
25. To administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and to issue commissions for the examinations of witnesses who are outside of the state or unable to attend before the authority or who are excused from attendance;
26. To make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare;
27. To issue bonds from time to time for any of its corporate purposes;

28. To issue refunding bonds for the purpose of paying or retiring bonds previously issued by it;
29. To borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within its area of operation;
30. To take over or lease or manage any housing project or undertaking constructed or owned by the federal government;
31. To comply with such conditions and to enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable to carry out the provisions of this subsection and the preceding subsection;
32. To do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project;
33. To exercise all or any part or combination of powers herein granted; and
34. To exercise such other powers and duties as may be necessary to carry out the purposes and provisions of this chapter.

An authority, in exercising the powers specified in subsections 24, 25, and 26 of this section, may act through one or more of the commissioners or through other persons designated by it. No provision of law with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless there shall be specific provision to that effect by the legislative assembly.

Source: N.D.C.C.; S. L. 1973, ch. 80, § 21, Breach of Agreement.

Cross-Reference.

Eminent domain, see ch. 32-15.

Constitutionality.

Since the purpose for which housing authorities take property by right of eminent domain is public, such power is not contrary to due process clause of federal constitution nor of provision of state constitution forbidding taking of private property for public use without just compensation. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 819.

Should housing authority's officers fail or refuse to make agreed payments, such officers could be compelled to do so through mandamus or mandatory injunction buttressed by contempt proceedings. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 819.

Cooperation with City.

A city having a population of five thousand or less may enter into an agreement to cooperate with the county housing authority in the performance of functions arising from powers so granted by the legislature to the city. *Pradet v. City of Southwest Fargo*, 79 ND 799, 59 NW 2d 871.

23-11-12. Rentals to be at lowest possible rate—Authority not to be operated for profit.—Each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling ac-

commodations. No housing authority shall construct or operate any project for profit or as a source of revenue to the city or the county.

Source: S. L. 1937, ch. 102, § 9; R. C. 1943, § 23-1112.

23-11-13. Rentals—How fixed by authority.—An authority shall fix the rentals for dwelling in its projects at no higher rates than it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income, and receipts of the authority from whatever source derived will be sufficient to:

1. Pay, as the same become due, the principal and interest on the bonds of the authority;
2. Meet the cost of, and provide for maintaining and operating, the projects of the authority, including the cost of any insurance thereon, and the administrative expenses of the authority; and
3. Create, during not less than the six years immediately succeeding its issuance of any bonds, a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter, and to maintain such reserve.

Source: S. L. 1937, ch. 102, § 9; R. C. 1943, § 23-1113.

Cross-Reference.
Exceptions to limitations provided by this section, see § 23-11-31.

23-11-14. Rentals and tenant selection.—In the operation or management of housing projects, an authority at all times shall observe the following duties with respect to rentals and tenant selection:

1. It may rent or lease the dwelling accommodations therein only to persons of low income;
2. It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of such persons of low income;
3. It may rent or lease to a tenant dwelling accommodations consisting only of the number of rooms which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding;
4. It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an aggregate annual income in excess of five times the annual rental of the quarters to be furnished such person or persons. In computing the rental for this purpose, there shall be included in the rental the average annual cost to the occupant, as determined by the authority, of heat, water, electricity, gas, cooking, and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental; and
5. It shall prohibit subletting by tenants.

Source: S. L. 1937, ch. 102, § 10; R. C. 1943, § 23-1114.

Cross-Reference.
Exceptions to limitations provided by this section, see § 23-11-31.

Constitutionality.

Favored classification of "persons of low income" is neither artificial, capricious, arbitrary, nor unreasonable and

does not violate privileges and immunities clause of state constitution. *Fradet v. City of Southwest Fargo*, 79 ND 799, 59 NW 2d 871.

23-11-15. Right of authority to vest certain rights in obligee not restricted.—Sections 23-11-12, 23-11-13, and 23-11-14 shall not be construed as limiting or restricting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or to cause the appointment of a receiver thereof or to acquire title thereto through foreclosure proceedings.

Source: S. L. 1937, ch. 102, § 10; R. C. 1943, § 23-1115.

23-11-16. Cooperation between authorities.—Any two or more authorities may join or cooperate with one another in the exercise of any or all of the powers conferred upon them for the purpose of financing, planning, undertaking, constructing, or operating a housing project or projects located within the area of operation of any one or more of such authorities.

Source: S. L. 1937, ch. 102, § 11; R. C. 1943, § 23-1116.

City Cooperation.

Cooperation of city with county housing authority can be exercised insofar

as the general powers granted the city cover the matters upon which cooperation is desired. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

23-11-16.1. Dissolution of city housing authorities authorized—Procedure—Effect.—The governing body of any city may, by resolution, dissolve the housing authority of such city for the purpose of electing to participate in a county housing authority pursuant to section 54-40-08. Upon the adoption of such a resolution the city authority shall cease to exist, except for the purpose of winding up its affairs and executing a deed to the county housing authority pursuant to the agree-

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ment executed between the city and the county under the provisions of section 54-40-08. All the rights, contracts, obligations, and property, real and personal, of the city authority shall be transferred to and become vested in the county authority, provided that all bonded indebtedness issued by the city authority shall remain a lien against the income and revenues of the housing project pledged to the payment of such bonds. All rights and remedies of any person against the city authority may be asserted and enforced against the county authority to the same extent as they might have been against the city authority.

Source: S. L. 1971, ch. 259, § 1.

23-11-17. Eminent domain—Exercise of power.—As a prerequisite to the taking of real property by the exercise of the power of eminent domain, an authority shall adopt a resolution declaring that the acquisition of the real property described therein is necessary for its purposes under the provisions of this chapter. Such power may be exercised in the manner provided in sections 32-15-01 to 32-15-34, inclusive, or by any other applicable provision of this code relating to the exercise of the power of eminent domain.

Source: S. L. 1937, ch. 102, § 12; R. C. 1943, § 23-1117.

Constitutionality.

Since the purpose for which the housing authorities took property by right of eminent domain was public (slum

clearance and low rent housing) the provisions of this section did not violate provisions of state constitution forbidding the taking of private property for public use without just compensation. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

23-11-18. Planning, zoning, and building laws.—All housing projects of an authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable in the locality in which the housing project is situated. In the planning and location of any housing project, an authority shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing authority functions.

Source: S. L. 1937, ch. 102, § 13; R. C. 1943, § 23-1118.

23-11-19. Bonds—Issued pursuant to resolution—General provisions.—Bonds of an authority shall be issued pursuant to a resolution of the commissioners thereof. Such resolution shall specify:

1. Whether such bonds shall be issued in one or more series;
2. The date or dates which the bonds shall bear;
3. The time or times at which the bonds shall mature;
4. The interest rate or rates resulting in an average annual net interest cost, not exceeding eight percent per annum, on those issues which are sold at private sale, which the bonds shall bear; 1973 SUPPLEMENT
5. The denomination or denominations in which the bonds shall be issued;
6. The form, either coupon or registered, in which the bonds shall be issued;
7. The conversion or registration privileges, if any, which the bonds shall carry;
8. The rank or priority which shall exist between various issues of bonds and various kinds of bonds issued;
9. The manner in which the bonds shall be executed;
10. The medium in which the bonds shall be payable;
11. The place or places at which the bonds shall be payable; and
12. The terms of redemption, and whether with or without premium, to which the bonds shall be subject.

The conditions specified in the resolution may be printed in any trust indenture or mortgage given by the authority to secure any bonds issued by it.

Source: S. L. 1937, ch. 102, § 15; R. C. 1943, § 23-1119. Cross-Reference. Municipal bonds, see § 21-03-02.

23-11-20. Bonds—Types which may be issued.—An authority may issue such types of bonds as it may determine, including bonds on which the interest and principal are payable:

1. Exclusively from the income and revenues of the housing project financed with the proceeds of such bonds or with such proceeds together with a grant from the federal government in aid of such project;
2. Exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds; or
3. From its revenues generally.

The bonds and other obligations of the authority shall not be payable out of any funds or properties other than those of the authority. Any of such bonds, however, may be secured additionally by a pledge of

any revenues or by a mortgage on any housing project, projects, or other property of the authority.

Source: S. L. 1937, ch. 102, § 14; R. C. 1943, § 23-1120.

23-11-21. Bonds—Liability—Tax exempt.—Neither the commissioners of an authority nor any person executing bonds of the authority shall be liable personally thereon by reason of the issuance thereof, nor shall any city, county, or state, or political subdivision thereof, be liable thereon. The bonds and other obligations of an authority shall not be a debt of the city, county, or state, nor of any political subdivision thereof, and shall so state on their face. They shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Such bonds, together with the interest thereon and income therefrom, shall be exempt from taxation.

Source: S. L. 1937, ch. 102, § 14; R. C. 1943, § 23-1121.

Debt Limitation.

By terms of this statute no liability for bonds of housing authority can be imposed upon the county or city and such bonds do not constitute debts of the county in excess of constitutional debt limitation. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

Pledging of Credit.

Where housing project was financed by federal government aid and by issue of authority's bonds, the city's credit has not been pledged, nor is it in any way liable. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

Tax Exempt.

Any property held by a housing authority for public purposes shall be exempt from taxation. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

23-11-22. Sale of bonds.—Except as hereinafter provided, bonds issued by an authority shall be sold at a public sale held after a notice has been published at least five days prior to the sale in a newspaper having a general circulation in the city or county, as the case may be, and in a financial newspaper published in the city of New York or in the city of Chicago. There shall be no interest rate ceiling on issues sold at public sale. Such bonds may be sold to the federal government, however, at private sale without public advertisement. Such bonds may also be sold at a private sale when such obligations do not exceed the total sum of one hundred thousand dollars. The bonds shall not be sold for less than ninety-eight percent of par.

Source: N.D.C.C.; S. L. 1971, ch. 249, § 10.

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23-11-23. Bonds—Validity when officer who signs bond is no longer in office—Deemed issued for housing project.—If any of the commissioners or officers of an authority whose signatures appear on any bonds or coupons cease to be such commissioners or officers before the delivery of the bonds, the signatures shall be valid and sufficient for all purposes the same as if the commissioners or officers had remained in office until the delivery had been completed. Any bonds issued pursuant to the provisions of the chapter shall be fully negotiable. In an action, suit, or proceeding involving the validity or enforceability of any bond of an authority or of the security therefor, the bond shall be

deemed conclusively to have been issued for a housing project if the bond recites that it has been issued by the authority to aid in financing a housing project to provide dwelling accommodations for persons of low income. The project conclusively shall be deemed to have been planned, located, and constructed in accordance with the purposes and provisions of this chapter if such a statement is contained in the bond.

Source: S. L. 1937, ch. 102, § 15; R. C. 1943, § 23-1123.

23-11-24. Provisions of bonds, trust indentures, and mortgages.—In connection with the issuance of bonds or the incurring of obligations under leases, and in order to secure the payment of such bonds or obligations, an authority, in addition to its other powers, shall have power:

1. To pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or thereafter may come into existence;
2. To mortgage all or any part of its real or personal property then owned or thereafter acquired;
3. To covenant against pledging all or any part of its rents, fees, and revenues, or against mortgaging all or any part of its real or personal property, to which its right or title then exists or thereafter may come into existence, or against permitting or suffering any lien on any such revenues or property;
4. To covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof;
5. To covenant as to what other or additional debts or obligations may be incurred by it;
6. To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;
7. To provide for the replacement of lost, destroyed, or mutilated bonds;
8. To covenant against extending the time for the payment of its bonds or interest thereon;
9. To redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;
10. To covenant, subject to the limitations contained in this chapter, as to the rents and fees to be charged in the operation of a housing project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof;
11. To create, or to authorize the creation of, special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes, and to covenant as to the use and disposition of the moneys held in such funds;
12. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the

amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

13. To covenant as to the use of any or all of its real or personal property;
14. To covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;
15. To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;
16. To covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become, or may be declared, due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;
17. To vest in a trustee or trustees or in the holders of bonds, or any proportion of them, the right to enforce the payment of the bonds or any covenants securing or relating thereto;
18. To vest in a trustee or trustees the right, in the event of a default by the authority, to take possession and to use, operate, and manage any housing project or part thereof, to collect the rents and revenues arising therefrom, and to dispose of such moneys in accordance with the agreement of the authority with said trustee;
19. To provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof;
20. To provide the terms and conditions upon which the trustee or trustees or the holders of bonds, or any proportion of them, may enforce any covenant or rights securing or relating to the bonds;
21. To exercise all or any part or combination of the powers herein granted;
22. To make covenants other than, and in addition to, the covenants herein expressly authorized, of like or different character; and
23. To make such covenants and to do any and all such acts and things as may be necessary, convenient, or desirable in order to secure its bonds, or, in the absolute discretion of said authority, as will tend to make the bonds more marketable notwithstanding that such covenants, acts, or things may not be enumerated herein.

Source: S. L. 1937, ch. 102, § 16; R. C. 1943, § 23-1124.

23-11-25. Certification of attorney general as to legality of bonds.—An authority may submit to the attorney general of this state any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the attorney general, he shall examine and pass upon the validity

thereof and of the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this chapter and otherwise are regular in form, and if the bonds, when delivered and paid for, will constitute binding and legal obligations of the authority enforceable according to the terms thereof, the attorney general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the constitution and laws of the state of North Dakota.

Source: S. L. 1937, ch. 102, § 17; R. C. 1943, § 23-1125.

23-11-26. Rights and remedies of an obligee of authority.—An obligee of an authority, in addition to all other rights which may be conferred on him, and subject only to any contractual restrictions binding upon such obligee, may:

1. By mandamus, suit, action, or proceeding at law or in equity, compel the authority and the commissioners, officers, agents, or employees thereof, to perform each and every term, provision, and covenant contained in any contract of the authority with or for the benefit of such obligee, and require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this chapter; and
2. By suit, action, or proceeding in equity, enjoin any act or thing which may be unlawful or in violation of any of the rights of such obligee of the authority.

Source: S. L. 1937, ch. 102, § 18; R. C. 1943, § 23-1126.

23-11-27. Additional remedies conferable by authority on obligee.—An authority, by its resolution, trust indenture, mortgage, lease, or other contract, may confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, in addition to all rights that otherwise may be conferred, the right, upon the happening of an event of default as defined in such resolution or instrument, by suit, action, or proceeding, in any court of competent jurisdiction:

1. To cause possession of any housing project, or any part thereof, to be surrendered to such obligee;
2. To obtain the appointment of a receiver of any housing project of said authority, or of any part thereof, and of the rents and profits therefrom. If such receiver is appointed, he may enter into and take possession of such housing project, or of any part thereof, and operate and maintain the same and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and he shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of the authority as the court shall direct; and

3. To require the authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

Source: S. L. 1937, ch. 102, § 19; R. C. 1943, § 23-1127.

23-11-28. Exemption of real property from execution sale. — All real property of an authority including an authority created under Indian laws recognized by the federal government shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against any authority be a charge or lien upon its real property. The provisions of this section, however shall not apply to nor limit the right of obligees to foreclose or otherwise enforce any mortgage of

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an authority or the right of an obligee to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

Source: N.D.C.C.; S. L. 1971, ch. 260, § 1.

23-11-29. Tax exemptions and payments in lieu of taxes.—The property of an authority including an authority created under Indian laws recognized by the federal government is declared to be public property used for essential public and governmental purposes and shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision thereof. In lieu of such taxes or special assessments, an authority may agree to make payments to the city, county, state, or any such political subdivision for improvements, services, and facilities furnished thereby for the benefits of a housing project, but in no event shall such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished.

Source: N.D.C.C.; S. L. 1971, ch. 260, § 2.

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23-11-30. Reports.—At least once every year, an authority shall file with the city auditor or county auditor, as the case may be, and with the state planning division, a report of its activities for the preceding year and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this chapter.

Source: N.D.C.C.; S. L. 1971, ch. 259, § 3.

23-11-31. Houses for workers in national defense, veterans of World War I and veterans of World War II.—Any housing authority may undertake the development and administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities who, it is determined by the housing authority, would not otherwise be able to secure safe and sanitary dwellings within the vicinity thereof. In the ownership, development, or administration of such projects a housing authority shall have all the rights, powers, privileges, and immunities that such authority has under any provisions of law relating to the ownership, development, or administration of slum clearance and housing projects for persons of low income, and shall exercise such rights, powers, and privileges as though all the provisions of law applicable to slum clearance and housing projects for persons of low income were applicable to projects developed or administered to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities as provided in this section, and housing projects developed or administered hereunder shall constitute housing projects under the provisions of this chapter. During the existence of this chapter, in which a housing authority finds, and such finding shall be conclusive in any suit, action, or proceeding, that within its area of operation, or any part thereof, there is an acute shortage of safe and sanitary dwellings, which impedes the national defense program or the general welfare of veterans of World War I and veterans of World War II in this state and that necessary and safe and sanitary dwellings would not otherwise be provided when needed for such persons, any project developed or administered by such housing authority, or by any housing authority cooperating with it, in such area pursuant to this section, with the financial aid of the federal government, or as agent for the federal government as hereinafter provided, shall not be subject to the limitations provided in sections 23-11-13 and 23-11-14. During the existence of this chapter a housing authority may make payments in such amounts as it finds necessary or desirable for any services, facilities, works, privileges, or improvements furnished for or in connection with any such projects. After the national defense period any such projects owned and administered by a housing authority shall be administered in accordance with the preceding sections of this chapter save that as to veterans of World War I and veterans of World War II this section shall not be subject to the limitations in section 23-11-14.

Source: S. L. 1941, ch. 217, § 2; 1943, ch. 196, § 1; R. C. 1943, § 23-1131; S. L. 1949, ch. 191, § 1; 1957 Supp., § 23-1131.

Cross-References.

Public welfare board to study housing conditions, see § 50-06-06.

Veterans' housing, see ch. 37-22.

Public Purpose.

Although special provisions are made in this section for veterans, this section is for a public purpose. *Perch v. Housing Authority of Cass County*, 79 ND 761, 59 NW 2d 849.

23-11-32. Cooperation with federal government.—A housing authority may exercise any or all of its powers for the purpose of cooperating

with, or acting as agent for, the federal government in the development or administration of projects by the federal government to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities or veterans of World War I and veterans of World War II and may undertake the development or administration of any such projects for the federal government. In order to assure the availability of safe and sanitary housing for persons engaged in national defense activities, or for veterans of World War I and veterans of World War II, a housing authority may sell, in whole or in part, to the federal government any housing project developed for such persons but not yet occupied by such persons; such sale shall be at such price and upon such terms as the housing authority shall prescribe and shall include provision for the satisfaction of all debts and liabilities of the authority relating to such project.

Source: S. L. 1941, ch. 217, § 3; R. C. 1943, § 23-1132; S. L. 1949, ch. 191, § 2; 1957 Supp., § 23-1132.

23-11-33. Municipalities may cooperate.—Any city, county, or other public body shall have the right and power to cooperate with housing authorities, or with the federal government, with respect to the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and veterans of World War I and veterans of World War II which such city, county, or other public body has for the purpose of assisting the development or administration of slum clearance or housing projects for such persons.

Source: S. L. 1941, ch. 217, § 4; R. C. 1943, § 23-1133; S. L. 1949, ch. 191, § 3; 1957 Supp., § 23-1133.

National Defense.

Any city, county, or other public body had the right to cooperate with housing authorities in development of projects to make available housing for persons engaged in national defense activities. *Fradet v. City of Southwest Fargo*, 79 ND 799, 59 NW 2d 871.

Powers of City.

City may enter into a cooperative agreement with housing authority, at least insofar as the general powers granted the city cover the matters upon which cooperation is desired. *Ferch v. Housing Authority of Cass County*, 79 ND 761, 59 NW 2d 849.

23-11-34. Powers of housing authority.—This chapter shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and veterans of World War I and veterans of World War II as provided in this chapter and for a housing authority to cooperate with, or act as agent for, the federal government in the development or administration of similar projects by the federal government. In acting under this authorization, a housing authority shall not be subject to any limitations, restrictions, or requirements of other laws,

except those relating to land acquisition, prescribing the procedure or action to be taken in the development or administration of any public works, including slum clearance and housing projects for such persons or undertakings or projects of municipal or public corporations or political subdivisions or agencies of the state. A housing authority may do any and all things necessary or desirable to cooperate with, or act as agent for, the federal government, or to secure financial aid, in the expeditious development or in the administration of projects to assure the availability of safe and sanitary dwellings for persons engaged in national defense activities and veterans of World War I and veterans of World War II and to effectuate the purposes of this chapter.

Source: S. L. 1941, ch. 217, § 5; R. C. 1943, § 23-1134; S. L. 1949, ch. 191, § 4; 1957 Supp., § 23-1134.

Condemnation Area.

Condemnation of land for new housing

outside the slum area is valid. Otherwise the purpose of the Housing Act would in many instances be thwarted. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

23-11-35. Definitions.—As used in sections 23-11-31 to 23-11-36, inclusive:

1. "Persons engaged in national defense activities" shall include enlisted men in the military and naval services of the United States, employees of the war and navy departments assigned to duty at military or naval reservations, posts, or bases, and workers engaged or to be engaged in industries connected with and essential to the national defense program, and shall include the families of the aforesaid persons who are living with them;
2. "Persons of low income" shall mean persons or families who lack the amount of income which is necessary, as determined by the housing authority undertaking the housing project, to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding;
3. "Development" shall mean any and all undertakings necessary for the planning, land acquisition, demolition, financing, construction, or equipment in connection with a project, including the negotiation or award of contracts therefor, and shall include the acquisition of any project, in whole or in part, from the federal government;
4. "Administration" shall mean any and all undertakings necessary for management, operation, or maintenance, in connection with any project, and shall include the leasing of any project, in whole or in part, from the federal government;
5. "Federal government" shall mean the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America;
6. The development of a project shall be deemed to be initiated if a housing authority has issued any bonds, notes, or other obligations with respect to financing the development of such project of the authority, or has contracted with the federal government

with respect to the exercise of powers hereunder in the development of such project of the federal government for which an allocation of funds has been made during the existence of this chapter;

7. "Housing authority" shall mean any housing authority established or hereafter established pursuant to the provisions of this chapter; and
8. "Veteran" means a man or woman who served honorably and faithfully for more than sixty days in active service in the military, naval, marine, woman's army auxiliary corps, or coast guard forces of the United States, or any of the governments allied with the United States in World War I and World War II.

Source: S. L. 1941, ch. 217, § 6; 1943, ch. 196, § 2; R. C. 1943, § 23-1135; S. L. 1949, ch. 191, § 5; 1957 Supp., § 23-1135.

Cross-Reference.

Word defined by statute always has same meaning, see § 1-01-09.

Constitutionality.

Fact that housing developments were for persons of low income did not violate privileges and immunities clause of the state constitution, since benefits are open to all those who come under income limit. *Ferch v. Housing Authority of Cass County*, 79 ND 764, 59 NW 2d 849.

23-11-36. Powers not limited.—The powers conferred by sections 23-11-31 to 23-11-35, inclusive, shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of a housing authority.

Source: S. L. 1941, ch. 217, § 7; R. C. 1943, § 23-1136.

CHAPTER 40-33

MUNICIPAL UTILITIES

Section 40-33-01	Electric light, telephone, natural and artificial gas plants, pipelines and distribution systems and power plants — Municipalities may purchase, erect, construct, maintain, sell, or lease.	Section 40-33-02	Acquiring, erecting, or improving plant, system, or line without election prohibited—Exception.
Section 40-33-03	Sale or lease of plant, system, or line — Offer or written proposition — Election — Proceeds.	Section 40-33-14	Contract to supply surplus water or electricity outside of municipal limits—Regulations governing.
40-33-04	Manner of payment of purchase, erection, improvement, or leasing of plant, system, or line — Regulations governing.	40-33-15	Proceedings instituted under existing law — How completed.
40-33-05	Payment of cost of plant, system, or line by special assessment warrants — Regulations governing.	40-33-16	Municipality may purchase water for distribution.
40-33-06	Payment of cost of improvement by general taxation—Regulations governing.	40-33-17	City may contract for water treatment plant.
40-33-07	Issuance of bonds — Election required — Regulations governing.	40-33-18	Resolution authorizing contract — Payment solely through net revenue—Issuance of revenue bonds or of certificates evidencing indebtedness under contract.
40-33-08	Questions and propositions may be voted upon at same election and may be contained on one ballot.	40-33-19	Agreements authorized — Special rates and charges.
40-33-09	Extension of municipal lighting, heating, or power system, or gas works by special assessment method.	40-33-20	Indebtedness not general obligation of municipality — Conditional sales authorized.
40-33-10	Municipal utilities fund—Contents—Kept separate from other funds—Use and disbursement.	40-33-21	Powers conferred are supplementary.
40-33-11	Payments out of municipal utilities fund—Limitations.	40-33-22	Joint construction and operation of gas transmission or distribution systems or plants.
40-33-12	Surplus in municipal utilities fund—How expended—Regulations governing.	40-33-23	Sale of gas outside municipalities.
40-33-13	Municipality may sell surplus electricity or water outside of municipal limits—Regulations governing.	40-33-24	Funds of jointly operated utilities.
		40-33-25	Surplus funds of jointly operated utility.
		40-33-26	Municipal transportation system—Resolution.
		40-33-27	Municipal transportation system—Bonds.
		40-33-28	Municipal transportation system—Bond limitations.
		40-33-29	Municipal transportation system—Application—Intent.

CHAPTER 40-49

PARKS AND PARK DISTRICTS

Section		Section	
40-49-01	Municipalities may acquire real estate for parks or public grounds by gift or devise — Extension of police power.	40-49-12	Powers of the board of park commissioners.
40-49-02	Municipalities may take advantage of chapter — Vote required—How taken.	40-49-13	Ordinances—Powers exercised by — Readings — Adopting — Approving — Publication — Enacting clause.
40-49-03	Ordinance required to create park districts — Territory embraced to be park district.	40-49-14	When yea and nay vote taken — Letting contracts — Debt limit—Bills, claims, and demands against commission.
40-49-04	Designation of park district — General powers — Definition.	40-49-15	Purchase of land by city park district on installment contract—Conditions and limitations.
40-49-05	Board of park commissioners in city — Term — Term on first board.	40-49-16	City engineer is ex officio engineer and surveyor for board of park commissioners.
40-49-06	Board of park commissioners in villages—Term—Term on first board—Repealed.	40-49-17	Jurisdiction to determine actions involving violations of ordinances of board of park commissioners.
40-49-07	Election and qualification of members of board of park commissioners.	40-49-18	General code provisions to govern park districts.
40-49-08	Organization of board of park commissioners — Municipal treasurer to act as treasurer of board.	40-49-19	Dissolution of village park district—Petition for election — Notice of election — Order of dissolution — Repealed.
40-49-09	Vacancies — How filled — Removal of residence creates vacancy.	40-49-20	Park districts may adopt civil service systems.
40-49-10	Members of board of park commissioners may receive compensation — Interest in contracts prohibited.	40-49-21	Park districts may provide for employees' pensions.
40-49-11	Regular and special meetings of the park commission — Procedure.	40-49-22	Tax levy for park district employees' pension fund.
		40-49-23	Land transfers or abandonment.

PUBLIC RECREATION SYSTEM *

Section	Definitions.	Section	
40-55-01		40-55-06	Establishing recreation board or commission — Members — Terms — Vacancy — Compensation.
40-55-02	Municipality, school, and park district may dedicate, set apart, acquire, lease, and maintain recreation centers — Appropriation.	40-55-07	Governing body, board, or commission may accept grants of real estate and money — Conditions.
40-55-03	Providing and maintaining recreational facilities — May be vested in an existing body — Powers of body.	40-55-08	Election to determine desirability of establishing recreation system — How called.
40-55-04	Municipalities, school, or park districts may provide and establish joint recreation centers and facilities.	40-55-09	Favorable vote at election — Procedure.
40-55-05	Bonds may be issued providing for such facilities.	40-55-10	Public recreation under this chapter deemed governmental subdivision function.
		40-55-11	Recreation centers or systems may be established as memorials.

40-55-01. Definitions.—1. The term "governing body" as herein used means city council, board of trustees or commissioners of any city or township, the trustees of any school district and the commissioners of any park district in North Dakota.

2. The term "municipality" as used in this chapter refers to and means any city or township in North Dakota.

Source: S. L. 1947, ch. 283, § 1; R. C. 1943, 1957 Supp., § 40-5501; S. L. 1967, ch. 323, § 225.

40-55-02. Municipality, school, and park district may dedicate, set apart, acquire, lease, and maintain recreation centers—Appropriation.—The governing body of any municipality, park district, or school district may dedicate and set apart for use as playgrounds, recreation centers, and other recreation or character building purposes and community centers, lands or buildings, or both, owned or leased by such municipality, school district, or park district, and not dedicated or devoted to another, inconsistent public use; and such municipality, school district, or park district, in such manner as may now or hereafter be authorized or provided by law for the acquisition of lands or buildings for public purposes by such municipality, school district, or park district, may acquire or lease lands or buildings, or both, within or beyond the corporate limits of such municipality, school district, or park district, for community centers, playgrounds, recreation centers or other recreational and character building purposes and when the governing body of such municipality, school district, or park district, so dedicates, sets apart, acquires or leases lands or buildings for such purposes, on its own initiative, it may provide for their conduct, equipment and maintenance according to the provisions of this chapter by making an appropriation from the general municipal, school district, or park district funds.

Source: S. L. 1947, ch. 283, § 2; R. C. 1943, 1957 Supp., § 40-5502.

40-55-01. Municipalities, school, or park districts may provide and establish joint recreation centers and facilities.—Any two or more municipalities, school districts, or park districts, jointly, may provide, establish, maintain and conduct a public recreation system, and acquire property therefor, and establish and maintain community centers, playgrounds, recreation centers and other recreational and character building areas, structures, facilities and activities.

Source: S. L. 1947, ch. 283, § 4; R. C. 1943, 1957 Supp., § 40-5504.

CHAPTER 40-57

MUNICIPAL INDUSTRIAL DEVELOPMENT ACT OF 1955

Section		Section	
40-57-01	Name of act.	40-57-11	Bonds and receipts or certificates issued pending preparation of bonds—Negotiability.
40-57-02	"Projects" and "municipalities" defined.	40-57-12	Validity of bonds — Regulations governing.
40-57-03	Powers of municipality.	40-57-13	Bonds exempt from taxation —Exception.
40-57-04	Resolution authorizing project and the issuance of revenue bonds—No election required.	40-57-14	Covenants that may be inserted in ordinance or resolution authorizing bonds.
40-57-05	No approval of public officer required.	40-57-15	Liability of municipality for bonds—Taxing power prohibited—Bond not a lien.
40-57-06	Certificate of convenience or necessity not required.	40-57-16	Remedies of bondholders in general.
40-57-07	Cost of project—How determined.	40-57-17	Exemptions from taxation.
40-57-08	Excess revenues not to revert to general fund of municipality—Exception.	40-57-18	Construction.
40-57-09	Provisions governing revenue bonds.	40-57-19	General obligation bonds—Issuance—Levy.
40-57-10	Sale of revenue bonds.	40-57-20	Declaration and finding of public purpose.

40-57-01. Name of act.—This chapter may be cited as the Municipal Industrial Development Act of 1955.

Source: S. L. 1955, ch. 280, § 1; R. C. 1943, 1957 Supp., § 40-5701.

40-57-02. "Projects" and "municipalities" defined.—As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" shall include counties as well as municipalities of the types listed in section 40-01-01, subsection 1, and the term "project" shall mean any real property, buildings and improvements on real property or the buildings thereon, and any equipment located on such real property or in such buildings, or elsewhere, or personal property which is used or useful in connection with revenue-producing enterprises, or any combination of two or more such enterprises, engaged or to be engaged in:

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1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
3. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
4. Any other industry or business not prohibited by the Constitution or laws of the state of North Dakota.

In no event, however, shall the term "project" include those undertakings defined in chapter 40-35, with the exception of the undertaking defined in section 40-35-02 pertaining to the purchase, acquisition, construction, maintenance, and operation of a hospital and improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.

Source: N.D.C.C.; S. L. 1969, ch. 383, § 1; 1973, ch. 339, § 1; 1973, ch. 340, § 1.

Note.

Section 40-57-02 was amended twice by the 1973 Legislative Assembly, once by section 1 of chapter 339, 1973 S. L., and once by section 1 of chapter 340, 1973 S. L. Both amendments inserted the provision incorporating hospitals within

the meaning of "project" by excepting them from the general exclusion relative to chapter 40-35 and the amendment by chapter 340 inserted the provisions relating to improvements or equipment used for abatement or control of environmental pollution; therefore, pursuant to section 1-02-09.1, the section is printed above in the form in which it was enacted by the latter act.

40-57-03. Powers of municipality.—Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire whether by purchase, lease, or gift, from any source whatsoever, any real property, buildings, improvements on real property or buildings, including but not limited to easements, profits, rights in land and water rights deemed necessary in connection therewith, and to construct, reconstruct, improve, better, or extend to real property, buildings, and improvements on real property and buildings of any project which shall be located within this state, whether wholly within or wholly without the municipality, or partially within and partially without the municipality;
2. Issue revenue bonds, in anticipation of the collection of revenues of such project, to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, better-

ment or extension of any project, whether then in existence or not;

3. Lease projects to any industrial or commercial enterprise in such manner that rents to be charged for the use of such projects shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds when due, and to provide for the operation, maintenance, insurance on, and depreciation of such projects, and any taxes thereon;
4. Pledge to the punctual payment of said bonds and the interest thereof, all or any part of the revenues of such project, including the revenues of projects which shall be acquired or constructed subsequent to the issuance of such bonds, as well as revenues of projects existing when such bonds were issued;
5. Mortgage or otherwise encumber said projects in favor of the holder, or holders, of said revenue bonds, or a trustee therefor, provided that in creating any such mortgages or encumbrances, a municipality shall not have the power to obligate itself except with respect to the project, except as otherwise provided by section 40-57-19;
6. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payments of its bonds;
7. Enter into and perform such contracts and agreements with other municipalities, political subdivisions, and state agencies, authorities and institutions as the respective governing bodies of the same may deem proper and feasible for or concerning the planning, construction, lease, or other acquisition, and the financing of such facilities, and the maintenance thereof. Any such municipalities so contracting with each other may also provide in their contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the facilities of the project;
8. Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing or other provision of any project, and to enter into agreements with such agency respecting such loans or grants;
9. Sell and convey all properties acquired in connection with such projects, including without limitation the sale and conveyance thereof subject to such mortgage as herein provided, and the sale and conveyance thereof to the lessee under an option granted in the lease of the project, for such price, and at such time as the governing body of the municipality may determine, provided,

however, that no sale or conveyance of such properties shall ever be made in such manner as to impair the rights or interests of the holder, or holders, of any bonds issued under the authority of this chapter;

10. Issue said revenue bonds to refund, in whole or in part bonds previously issued by such municipality under authority of this chapter.
11. In any instance where the project consists of the construction, reconstruction, improvement, betterment of real property, buildings and improvements on real property and buildings, the provisions of chapter 48-02 of the North Dakota Century Code and other applicable statutes shall apply; except that the municipality, in the lease and resolution or mortgage defining the terms and conditions upon which the project is to be constructed, leased and financed, or in a preliminary agreement establishing the general terms of the lease and financing of the project when constructed, may permit the lessee, subject to such terms and conditions as the municipality shall find necessary or desirable and proper, to provide for the construction, acquisition and installation of the buildings, improvements and equipment to be included in the project by any means available to the lessee and in the manner determined by the lessee, whether or not the procedure followed by the lessee is in conformity with said chapter 48-02.

No municipality shall have the power to operate any project referred to in this chapter as a business or in any manner whatsoever, except as the lessor thereof. No debt on the general credit of the municipality shall be incurred in any manner for any purpose under the provisions of this chapter, except as otherwise provided by section 40-57-19. No municipality may pay out of its general fund, or otherwise contribute to the cost of a project, nor can it use any land already owned by or in which the municipality has an interest, for the construction thereof of a project, except as otherwise provided by section 40-57-19.

Source: S. L. 1955, ch. 280, § 3; R. C. 1943, 1957 Supp., § 40-5703; S. L. 1961, ch. 284, § 2; 1965, ch. 294, §§ 2, 3.

Subletting or Assignment of Lease.

Nothing in this section limits the right of the lessee to sublet or assign his rights in the project. *Gripentrog v. City of Wahpeton*, 126 NW 2d 230.

Terms of Lease.

Subsection 3 of this section empowers the municipality to require the lessee to operate and maintain the enterprise, including the providing of insurance and payment of taxes and depreciation. *Gripentrog v. City of Wahpeton*, 126 NW 2d 230.

40-57-04. Resolution authorizing project and the issuance of revenue bonds—No election required.—The acquisition, construction, reconstruction, improvement, betterment, or extension of any project, and the issue of bonds in anticipation of the collection of the revenues of such project to provide funds to pay for the cost thereof, may be authorized by an ordinance or resolution of the governing body adopted at a regu-

lar meeting thereof by the affirmative vote of a majority of its members. No election shall be required to authorize the use of any of the powers conferred by this chapter.

Source: S. L. 1955, ch. 280, § 4; R. C. 1943, 1957 Supp., § 40-5704.

40-57-05. No approval of public officer required.—No notice to or consent of any governmental body or public officer of the state shall be required to authorize the issuance or sale of bonds or the making of any mortgage in connection therewith.

Source: S. L. 1955, ch. 280, § 5; R. C. 1943, 1957 Supp., § 40-5705.

40-57-06. Certificate of convenience or necessity not required.—It shall not be necessary for any municipality proceeding under this chapter to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other instrumentality of the state in order to acquire, construct, reconstruct, improve, better, or extend any project or for the issuance of bonds in connection therewith.

Source: S. L. 1955, ch. 280, § 6; R. C. 1943, 1957 Supp., § 40-5706.

40-57-07. Cost of project—How determined.—In determining the cost of a project, the governing body may include all cost and estimated cost of the issuance of the revenue bonds, all engineering, inspection, fiscal, and legal expense, and the interest which it is estimated will accrue during the construction period and for six months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this chapter.

Source: S. L. 1955, ch. 280, § 7; R. C. 1943, 1957 Supp., § 40-5707.

40-57-08. Excess revenues not to revert to general fund of municipality—Exception.—Any revenues of any and all projects in excess of the amount required to pay interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds, when due, to provide for the operation, maintenance, insurance, taxes, and depreciation of such project, shall not revert to the general fund of the municipality. However, at such time as there shall be outstanding no revenue bonds issued by the municipality, any excess of revenues may be transferred to the general fund of the municipality in such amounts and at such times as the governing body of the municipality may deem proper and feasible.

Source: S. L. 1955, ch. 280, § 8; R. C. 1943, 1957 Supp., § 40-5708.

40-57-09. Provisions governing revenue bonds.—The resolution or ordinance authorizing the issuance of revenue bonds under this chapter,

or ordinance or resolution adopted subsequent to the adoption of the original resolution or ordinance, shall prescribe:

1. The maximum rate or rates of interest which such bonds shall bear;
2. Whether the bonds shall be in one or more series;
3. The date or dates which such bonds shall be payable;
4. The time or times, not exceeding forty years from their respective dates, when such bonds shall mature;
5. The medium in which such bonds shall be payable;
6. The place or places where such bonds shall be payable;
7. Whether or not such bonds shall carry registration privileges, and what such privileges, if any, shall be;
8. The terms of redemption, if any, to which such bonds shall be subject;
9. The manner in which such bonds shall be executed;
10. The terms, covenants, and conditions which such bonds shall contain; and
11. The form, either coupon or registered, in which such bonds shall be issued.

Source: S. L. 1955, ch. 280, § 9; R. C. 1943, 1957 Supp., § 40-5709; S. L. 1967, ch. 340, § 1.

40-57-10. Sale of revenue bonds.—Revenue bonds shall be sold at not less than ninety-five percent of par plus any accrued interest. Such bonds may be sold at private sale, or such bonds may be sold at public sale after notice of such sale has been published once at least five days prior to such sale in a newspaper circulating in the municipality, and in at least two financial newspapers published in Chicago, Illinois, in New York, New York, in Minneapolis, Minnesota, or in San Francisco, California. State or national banks may purchase the revenue bonds issued under the provisions of this chapter in an amount not to exceed ten percent of their capital and surplus.

Source: N.D.C.C.; S. L. 1971, ch. 422, § 1.

Excess Purchase.

Where state bank purchased revenue bonds in excess of amount prescribed

by provision of purchase contract since seller was not contributed to or induced the

under this section, fact that neither seller of securities nor bank was aware of purchase limitation did not permit remistake. Security State Bank of Wishek v. State, 181 NW 2d 225.

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40-57-11. Bonds and receipts or certificates issued pending preparation of bonds—Negotiability.—Pending the preparation of the definitive bonds interim certificates or receipts, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be negotiable within the meaning of and for all purposes specified in title 41, Negotiable Instruments.

Source: S. L. 1955, ch. 280, § 11; R. C. 1943, 1957 Supp., § 40-5711.

Cross-Reference.

Uniform Commercial Code, investment securities, see ch. 41-08.

40-57-12. Validity of bonds—Regulations governing.—Revenue bonds bearing the signatures of the appropriate officers who are in office on the date of the signing thereof shall be valid and binding obligations notwithstanding that before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of said bonds shall not be dependent on nor be affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the project for which said bonds are issued. The ordinance or resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter, and such recital shall be conclusive evidence of their validity and of the regularity of their issuance.

Source: S. L. 1955, ch. 280, § 12; R. C. 1943, 1957 Supp., § 40-5712.

40-57-13. Bonds exempt from taxation—Exception.—Bonds issued under the provisions of this chapter, and the income therefrom, shall be exempt from any taxes, except inheritance, estate, and transfer taxes.

Source: S. L. 1955, ch. 280, § 13; R. C. 1943, 1957 Supp., § 40-5713.

40-57-14. Covenants that may be inserted in ordinance or resolution authorizing bonds.—Any ordinance or resolution authorizing the issuance of bonds under this chapter to finance, in whole or in part, the acquisition, construction, reconstruction, improvement, betterment, or extension of any project may contain covenants, notwithstanding that such covenants may limit the exercise of powers conferred by this chapter, as to:

1. The rents to be charged for the use of properties acquired, constructed, reconstructed, improved, bettered, or extended under the authority of this chapter;
2. The use and disposition of the revenues of said projects;
3. The creation and maintenance of sinking funds and the regulation, use, and disposition thereof;
4. The creation and maintenance of funds to provide for maintaining the project and replacement of those properties which are subject to depreciation;
5. The purpose, or purposes, to which the proceeds of this sale of said bonds may be applied and the use and disposition of said proceeds;
6. The nature of mortgages or other encumbrances on the project made in favor of the holder or holders of such bonds, or a trustee therefor;
7. The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of bonds issued under this chapter may bring any suit or action on said bonds or on any coupons thereof;

8. The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of said project;
9. The insurance to be carried upon the project and the use and disposition of insurance moneys;
10. The keeping of books of account and the inspection and audit thereof;
11. The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived;
12. The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations;
13. The vesting in a trustee or trustees of the rights to enforce any covenants made to secure, to pay, or in relation, to the bonds; the powers and duties of such trustee or trustees, and the limitation of liabilities thereof;
14. The terms and conditions upon which the holder or holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under this chapter or any duties imposed thereby;
15. A procedure by which the terms of any ordinance or resolution authorizing bonds or of any other contract with bondholders, including, but not limited to, an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;
16. The subordination of the security of any bonds issued hereunder and the payment of principal and interest thereof, to the extent deemed feasible and desirable by the governing body, to other bonds or obligations of the municipality issued to finance the project or that may be outstanding when the bonds thus subordinated are issued and delivered.

Nothing in this section, or in this chapter, except as provided in section 40-57-19, shall authorize any municipality to do anything or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provisions, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a bond or debt.

Source: S. L. 1955, ch. 280, § 14; R. C. 1943, 1957 Supp., § 40-5714; S. L. 1961, ch. 284, § 4.

40-57-15. Liability of municipality for bonds—Taxing power prohibited—Bond not a lien.—Revenue bonds issued under this chapter

shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same be subject to any liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon, nor to enforce payment thereon against any property of the municipality except those projects, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purpose of this chapter. Such bonds shall not constitute a charge, lien nor encumbrance, legal or equitable, upon any property of the municipality, except those projects, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this chapter.

Each bond under this chapter shall recite in substance that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, except that such bond may be secured by a mortgage or other encumbrance on the project, or portion thereof, as authorized in this chapter, and that the bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation.

Source: S. L. 1955, ch. 280, § 15; R. C. 1943, 1957 Supp., § 40-5715.

40-57-16. Remedies of bondholders in general.—Subject to any contractual limitations binding upon the holders of any issue of revenue bonds, or a trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or any trustee therefor, for the equal benefit and protection of all bondholders similarly situated may:

1. By mandamus or other suit, action, or proceeding at law or in equity, enforce its rights against the municipality and its governing body and any of its officers, agents, and employees and may require and compel such municipality or such governing body or any such officers, agents, or employees to perform and carry out its and their duties and obligations under this chapter and its and their covenants and agreements with bondholders;
2. By action or suit in equity, require the municipality and the governing body thereof to account as if they were the trustees of an express trust;
3. By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;
4. Bring suit upon the bonds;
5. Foreclose any mortgage or lien given under the authority of this chapter, and cause the property standing as security to be sold under any proceedings permitted by law.

No right or remedy conferred by this chapter upon any bondholder, or upon any trustee therefor, is intended to be exclusive of any other right

or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this chapter, or by any other law in this state.

Source: S. L. 1935, ch. 280, § 16; R. C. 1943, 1957 Supp., § 40-5716.

40-57-17. Exemptions from taxation.—The leasehold granted by a municipality under this chapter is hereby classified as personal property for a period of five years from the granting of such leasehold and the execution of any instrument evidencing said grant. Upon application by the project lessee to the governing body of the municipality and approval the leasehold and all other personal property used by the lessee in connection with the project and located on the premises of the leasehold shall be exempt from personal property taxation for such five-year period. Further, that any corporate lessee under such a leasehold referred to shall, after making application therefor to the state tax commissioner, be exempt from the payment of corporate income taxes on any corporate income attributable to the business carried on by the lessee on such leasehold premises for a period of five years from the year in which the corporation lessee commenced business operations on the leased premises, provided, however, that this section shall not have the effect of exempting such corporation lessee from filing an annual income tax return. The application for exemption from personal property taxation shall be made within thirty days from the date of the granting of the leasehold referred to in this section. The application for exemption from taxation on corporate income shall be made within sixty days from the time the corporate lessee commences business operations on the leased premises. The project lessee may waive, in writing or by the act of making a payment, all or any portion of the tax exemption granted by this section.

Source: N.D.C.C.; S. L. 1969, ch. 384, § 1; 1971, ch. 423, § 1.

40-57-18. Construction.—The powers conferred by this chapter shall be in addition and supplemental to and not in substitution for, and the limitations imposed by this chapter shall not affect the powers conferred by, any other law. Revenue bonds may be issued under this chapter without regard to any other provisions of the laws of this state. The project may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this chapter for said purposes, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like project or for the issuance of bonds for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including but not limited to, any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. In so far as the provisions of this chapter are inconsistent with any other law of this state, the provisions of this chapter shall be controlling with reference to the issuance of revenue bonds and the security therefor.

Source: S. L. 1955, ch. 280, § 18; R. C. 1943, 1957 Supp., § 40-5718.

40-57-19. General obligation bonds—Issuance—Levy.—Municipalities may issue general obligation bonds to aid, construct, reconstruct, improve, better or extend any project undertaken under the provisions

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of this chapter for which revenue-producing bonds have been issued or to finance entirely new projects as provided in this chapter. However, before such general obligation bonds can be issued and the levy made to pay off the interest and principal of such bonds the governing body of such municipality shall hold an election for the purpose of determining whether such bonds should be issued and the tax levies made. If at such election two-thirds of the electors in the municipality vote in favor of issuing general obligation bonds, the governing body of the municipality may issue such bonds and make a levy sufficient to pay the interest and principal when due, provided the issuance of such bonds does not exceed, together with other outstanding indebtedness of the municipality, five percent of the assessed valuation of the taxable property therein. If at an election called for that purpose the governing body of the municipality determines that an increase in such indebtedness of three percent over and above such five percent limit is necessary and the proposed issue of general obligation bonds, together with other outstanding indebtedness of the municipality, does not exceed eight percent of the assessed valuation of the taxable property within the municipality, it may issue such bonds and make the tax levies to pay the interest and principal thereof, if two-thirds or more of the electors within the municipality vote in favor of such increase. The provisions of this section shall only be used when the real property, buildings, and improvements thereon of the project for which the general obligation bonds are to be issued represent an investment to the city of fifty thousand dollars or more and when the net worth of the industrial or commercial enterprise desiring to lease such project is at least five times the amount that the municipality will invest in the real property, buildings, and improvements thereon of the project. All general obligation bonds issued under the provisions of this section shall be in accordance and comply with the provisions of chapter 21-03 and those portions of title 21 that provide for the issuance of general obligation bonds. Bonds issued under the provisions of this section shall not in any manner alter or affect revenue-producing bonds issued under the provisions of this chapter.

Source: S. L. 1961, ch. 284, § 5.

Collateral References.

Municipal Corporations—265-267, 278,
285-286, 457-463, 858-861, 866-867, 869,
872-877.

38 Am. Jur., Municipal Corporations,
§ 429; 42 Am. Jur., Public Funds, § 72;

43 Am. Jur., Public Works, § 52.

64 C. J. S. Municipal Corporations,
§§ 1835, 1842, 1902, 1905, 1909, 1911-1912.

- 40-57-20. Declaration and finding of public purpose.—The legislative assembly of the state of North Dakota hereby declares and finds that it is and has been the purpose of chapter 40-57 of the North Dakota Century Code to sanction, authorize and encourage activities in the public interest and for the welfare of the state of North Dakota, its municipal subdivisions and people by assisting establishment of additional industrial plants and activities within the state, and increasing production of wealth and adding to the volume of employment, particularly during those seasons when employment in farming and ranching is slack, thus alleviating unemployment among the people of the state.

Source: S. L. 1961, ch. 284, § 6.

CHAPTER 40-57.1—TAX EXEMPTIONS FOR NEW INDUSTRIES

Section		Section	
40-57.1-01	Declaration and finding of public purpose.	40-57.1-05	Reapplication for tax exemption — Discretion of board of equalization.
40-57.1-02	"Projects" and "municipalities" defined.	40-57.1-06	Change in value or new location requiring reapplication for tax exemption.
40-57.1-03	Municipalities' authority to grant tax exemption—Notice to competitors—Limitations.	40-57.1-07	Exemptions—Time for making application.
40-57.1-04	Exemption from income tax —Limitations.		

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CHAPTER 40-57.2—INDUSTRIAL PLANNING SURVEYS AND VOCATIONAL TRAINING

Section		Section	
40-57.2-01	Cities and counties may enter into agreements for surveys for industrial development and vocational and on-the-job training.	40-57.2-02	Content of surveys.
		40-57.2-03	Declaration of legislative intent.
		40-57.2-04	City or county may make tax levy.

40-57.2-01. Cities and counties may enter into agreements for surveys for industrial development and vocational and on-the-job training.—The governing body of any city or county of this state is authorized in accordance with the provisions of this chapter to enter into contracts with any person, firm, association, or corporation for the purpose of obtaining site surveys and site development plans, structural and mechanical plans and surveys, market surveys, and similar plans and surveys relating to industrial development and plant location, design, construction, equipment, and operation. Similar contracts may be entered into by such political subdivisions in accordance with the provisions of this chapter for the providing of vocational and on-the-job training for residents of this state in industries located within this state. Such agreements shall be entered into only with a financially and educationally reliable person, firm, association, or corporation that has been approved for such agreement by a local development corporation located in such city or county and organized to encourage industrial and commercial development and growth.

Source: S. L. 1969, ch. 386, § 1.

40-57.2-02. Content of surveys.—The surveys permitted by this chapter shall consist of a detailed plan which may include, among such items required by the city or county, the following:

1. An evaluation of proposed sites, the various methods of utilization, and the suitability of the sites for industrial development for specific types of industry.
2. An evaluation of consumer demand for the various types of products that could be processed, assembled, fabricated, or manufactured by an industry or the different types of industry that could utilize the site, and the benefits to the city to be realized from each in terms of economic growth.
3. The available labor supply, skilled and unskilled, and what effect various types of industries would have on the supply.
4. Any other matters relating to planning, designing, and costs pertaining to plant buildings and plant equipment for specific plant location sites.

Source: S. L. 1969, ch. 386, § 2.

40-57.2-03. Declaration of legislative intent.—It is hereby declared to be the intent of the legislative assembly to promote the growth and development of small industry, and to assist in the creation and expansion of local skills and talents in North Dakota.

Source: S. L. 1969, ch. 386, § 3.

40-57.2-04. City or county may make tax levy.—Any city or county in this state, after resolution by its governing body that the question be submitted to its electors shall upon the approval thereof at a regular or special election by sixty percent of the qualified electors of such city or county voting in said regular or special election may levy a tax of not to exceed one mill upon its net taxable assessed valuation for the purpose of providing funds for vocational and on-the-job training services and surveys and otherwise carry out the provision under this chapter. The levy provided for in this section shall be over and above any tax levy limitations provided by law. No levy for a specific year shall be made if the balance in the fund remaining from levies

CHAPTER 40-58 URBAN RENEWAL LAW

Section		Section	
40-58-01	Short title.	40-58-12	Property exempt from taxes and from levy and sale by virtue of an execution.
40-58-02	Findings and declarations of necessity.	40-58-13	Cooperation by public bodies.
40-58-03	Encouragement of private enterprise.	40-58-14	Title of purchaser.
40-58-04	Workable program.	40-58-15	Exercise of powers in carrying out urban renewal project.
40-58-05	Finding of necessity by local governing body.	40-58-16	Urban renewal agency.
40-58-06	Preparation and approval of urban renewal plans.	40-58-17	Interested public officials, commissioners or employees.
40-58-07	Powers.	40-58-18	Ordinances relating to repair, closing and demolition of dwellings unfit for human habitation.
40-58-08	Eminent domain.	40-58-19	Definitions.
40-58-09	Disposal of property in urban renewal area.		
40-58-10	Issuance of bonds.		
40-58-11	Bonds as legal investments.		

40-58-01. Short title.—This chapter shall be known and may be cited as the "Urban Renewal Law".

Source: S. L. 1955, ch. 281, § 1; R. C. 1943, 1957 Supp., § 40-5801.

Law Review.

Gormley, Urban Redevelopment to

Further Aesthetic Considerations: The Changing Constitutional Concepts of Police Power and Eminent Domain, 41 N. D. L. Rev. 316.

40-58-02. Findings and declarations of necessity.—It is hereby found and declared that there exist in municipalities of the state slum and blighted areas (as herein defined) which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services and facilities.

It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable slum and blighted areas should be conserved and rehabilitated through voluntary action and the regulatory process.

It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

Source: S. L. 1955, ch. 281, § 2; R. C. 1943, 1957 Supp., § 40-5802.

40-58-03. Encouragement of private enterprise.—A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this chapter, including the formulation of a workable program, the approval of urban renewal plans consistent with the general plan for the municipality, the adoption and enforcement of ordinances as provided for in section 40-58-18, the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

Source: S. L. 1955, ch. 281, § 3; R. C. 1943, 1957 Supp., § 40-5803.

40-58-04. Workable program.—A municipality for the purposes of this chapter may formulate a workable program for utilizing appropriate private and public resources including those specified in section 40-58-18 to eliminate, and prevent the development or spread of, slums and urban blight; to encourage needed urban rehabilitation, to provide for the redevelopment of slum and blighted areas, or to undertake such of the aforesaid activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for: the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning and occupancy controls and standards; the rehabilitation or conservation of slum and blighted areas or portions thereof by replanning,

removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of slum areas or portions thereof.

Source: S. L. 1955, ch. 281, § 4; R. C. 1943, 1957 Supp., § 40-5804.

40-58-05. Finding of necessity by local governing body.—No municipality shall exercise any of the powers hereafter conferred upon municipalities by this chapter until after its local governing body shall have adopted a resolution finding that:

1. One or more slum or blighted areas exist in such municipality; and
2. The rehabilitation, conservation, or redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

Source: S. L. 1955, ch. 281, § 5; R. C. 1943, 1957 Supp., § 40-5805.

40-58-06. Preparation and approval of urban renewal plans.—1. A municipality shall not approve an urban renewal plan for an urban renewal area unless the governing body has, by resolution determined such area to be a slum area or a blighted area or a combination thereof and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a general plan for the municipality has been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt and to revise from time to time, a general plan for the physical development of the municipality as a whole giving due regard to the environs and metropolitan surroundings, to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal plan in accordance with subsection 4 of this section.

2. The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to a municipality. Prior to its approval of an urban renewal plan, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of

the planning commission or, if no recommendations are received within said thirty days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal plan prescribed by subsection 3 of this section.

3. The local governing body shall hold a public hearing on an urban renewal plan or substantial modification of an approved urban plan, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

4. Following such hearing, the local governing body may approve an urban renewal plan if it finds that:

- a. A feasible method exists for the location of families who will be displaced from the urban renewal area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;
- b. The urban renewal plan conforms to the general plan of the municipality as a whole; and
- c. The urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise.

5. An urban renewal plan may be modified at any time: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert. Any proposed modification which will substantially change the urban renewal plan as previously approved by the local governing body shall be subject to the requirements of this section, including the requirement of a public hearing, before it may be approved.

6. Upon the approval of an urban renewal plan by the municipality the provisions of said plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

Source: S. L. 1955, ch. 281, § 6; R. C. 1943, 1957 Supp., § 40-5806; S. L. 1965 Sp., ch. 6, § 1.

40-58-07. Powers.—Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

1. To undertake and carry out urban renewal projects within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its pow-

- ers under this chapter; and to disseminate slum clearance and urban renewal information.
2. To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.
 3. Within its area of operation, to enter upon any building or property in any urban renewal area in order to make surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property or personal property for its administrative purposes together with any improvements thereon; to hold, improve, clear or prepare for redevelopment any such property; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter: Provided, however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder, in the exercise of such functions with respect to an urban renewal project, unless the legislature shall specifically so state.
 4. To invest any urban renewal project funds held in reserves or sinking funds or any such funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 40-58-10 at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.
 5. To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes

- of this chapter, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A municipality may include in any contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal law as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter.
6. Within its area of operation, to make or have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans. Such plans may include, without limitation:
 - a. A general plan for the locality as a whole;
 - b. Urban renewal plans;
 - c. Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements;
 - d. Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and
 - e. Appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight, and to apply for, accept and utilize grants of funds from the federal government for such purposes.
 7. To prepare plans and provide reasonable assistance for the relocation of families displaced from an urban renewal area.
 8. To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this chapter, and to levy taxes and assessments for such purposes; to close, vacate, plan or replan streets, roads, sidewalks, ways or other places; to plan or replan, zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements with a housing authority or an urban renewal agency vested with urban renewal project powers under section 40-58-15, which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary, respecting action to be taken by such municipality pursuant to any of the powers granted by this chapter.
 9. Within its area of operation, to organize, coordinate and direct the administration of the provisions of this chapter as they apply to such municipality in order that the objective of remedying slum and blighted areas and preventing the causes thereof

within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

10. To exercise all or any part or combination of powers herein granted.

Source: S. L. 1955, ch. 281, § 7; R. C. 1943, 1957 Supp., § 40-5807.

Subsection 8—Payment of Special Assessments.

By giving an urban renewal agency

the power to levy and collect taxes the legislature impliedly authorized the payment of special assessments due thereon by the agency. City of Southwest Fargo Urban Renewal Agency v. Lenthe, 149 NW 2d 373.

40-58-08. Eminent domain.—1. A municipality shall have the right to acquire by condemnation any interest in real property, including a fee simple title thereto, which it may deem necessary for or in connection with an urban renewal project under this chapter. A municipality may exercise the power of eminent domain in the manner provided in housing authorities law, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner: Provided, that no real property belonging to the state, or any political subdivision thereof, may be acquired without its consent.

2. In any proceeding to fix or assess compensation for damages for the taking or damaging of property, or any interest therein, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following matters shall be admissible and shall be considered in fixing such compensation or damages, in addition to evidence or testimony otherwise admissible:

- a. Any use, condition, occupancy, or operation of such property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law or in any ordinance or regulatory measure of the state, county, municipality, other political subdivision, or any agency thereof, in which such property is located, as being unsafe, substandard, insanitary or otherwise contrary to the public health, safety, or welfare;
- b. The effect on the value of such property, of any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of any such use, condition, occupancy, or operation;
3. The foregoing testimony and evidence shall be admissible notwithstanding that no action has been taken by any public body or public officer toward the abatement, prohibition, elimination or correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public body or public officer charged with the duty

or authority so to do has rendered, made or issued any judgment, decree, determination or order for the abatement, prohibition, elimination or correction of any such use, condition, occupancy, or operation shall be admissible and shall be prima facie evidence of the existence and character of such use, condition, or operation.

Source: S. L. 1955, ch. 281, § 8; R. C. 1943, 1957 Supp., § 40-5808.

Collateral References.

Valuation at time of original wrongful entry by condemnor or at time of subsequent initiation of condemnation proceedings, 2 ALR 3d 1038.

Eminent domain: Restrictive covenant or right to enforcement thereof as compensable property right, 4 ALR 3d 1137.

Depreciation in value, from project for which land is condemned, as a factor in fixing compensation, 5 ALR 3d 901.

Right to condemn property in excess

of needs for a particular public purpose, 6 ALR 3d 297.

Zoning as a factor in determination of damages in eminent domain, 9 ALR 3d 291.

Law Reviews.

Covey, Jr., The French Law of Eminent Domain, 35 N. D. L. Rev. 209.

White & Schlosser, Public Needs and Private Rights: Eminent Domain and Land Condemnation in North Dakota, 38 N. D. L. Rev. 36.

Lynch, Jury Instructions in Eminent Domain Cases, 41 N. D. L. Rev. 495.

40-58-09. Disposal of property in urban renewal area.—1. A municipality may sell, lease or otherwise transfer real property or any interest therein acquired by it, and may enter into contracts with respect thereto, in an urban renewal area for residential, recreational, commercial, industrial or other uses or for public use, or may retain such property or interest for public use, in accordance with the urban renewal plan, subject to such covenants, conditions and restrictions, including covenants, running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas or to otherwise carry out the purposes of this chapter: Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account and give consideration to the uses provided in such plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be

without power to sell, lease or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. The inclusions in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof shall not prevent the filing of such contract or conveyance in the land records of the register of deeds in such manner as to afford actual or constructive notice thereof.

2. A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the community prior to the execution of any contract to sell, lease or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out, and may negotiate with any persons for proposals for the purchase, lease or other transfer of any real property acquired by the municipality in the urban renewal area. The municipality may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this chapter: Provided, that a notification of intention to accept such proposal shall be filed with the governing body not less than thirty days prior to any such acceptance. Thereafter, the municipality may execute such contract in accordance with the provisions of subsection 1 and deliver deeds, leases and other instruments and take all steps necessary to effectuate such contract.

3. A municipality may temporarily operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of subsection 1 above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan.

Source: S. L. 1955, ch. 281, § 9; R. C. 1943, 1957 Supp., § 40-5809.

40-58-10. Issuance of bonds.—1. A municipality shall have power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this chapter, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects under this chapter: Provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this chapter, and by a mortgage of any of such urban renewal projects, or any part thereof, title to which is in the municipality.

2. Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

3. Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, resulting in an average annual net interest cost not exceeding eight per centum per annum on those issues which are sold at private sale. Such bonds shall be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

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4. Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality may determine or may be exchanged for other bonds on the basis of par, provided that such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government. Such bonds may also be sold at private sale if such obligations do not exceed the total sum of one hundred thousand dollars. There shall be no interest rate ceiling on issues sold at public sale.

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5. In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signature shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

6. In any suit, action or proceeding involving the validity or enforceability of any bond issued under this chapter or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this chapter.

Source: S. L. 1955, ch. 281, § 10; R. C. 1943, 1957 Supp., § 40-5810.

40-58-11. Bonds as legal investments.—All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a municipality pursuant to this chapter or by any urban renewal agency or housing authority vested with urban renewal project powers under section 40-58-15: Provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

Source: S. L. 1955, ch. 281, § 11; R. C. 1943, 1957 Supp., § 40-5811.

40-58-12. Property exempt from taxes and from levy and sale by virtue of an execution.—1. All property of a municipality, including funds, owned or held by it for the purposes of this chapter shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property: Provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants or revenues from urban renewal projects.

2. The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property.

Source: S. L. 1955, ch. 281, § 12; R. C. 1943, 1957 Supp., § 40-5812.

Payment of Special Assessments.

This section does not exempt an urban renewal agency from the paying of

special assessments due and payable on lands which are the subject of urban renewal condemnation actions. City of Southwest Fargo Urban Renewal Agency v. Lenthe, 149 NW 2d 373.

40-58-13. Cooperation by public bodies.—1. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

- a. Dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other rights or privileges therein to a municipality;
- b. Incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section;
- c. Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan;
- d. Lend, grant or contribute funds to a municipality;
- e. Enter into agreements which may extend over any period, notwithstanding any provision or rule of law to the contrary with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban renewal project, and
- f. Cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise

empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places; plan or replan, zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the municipality. If at any time title to or possession of any urban renewal project is held by any public body or governmental agency, other than the municipality, which is authorized by law to engage in the undertaking, carrying out, or administration of urban renewal projects including any agency or instrumentality of the United States of America, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such public body or governmental agency. As used in this subsection, the term "municipality" shall also include an urban renewal agency or a housing authority vested with all of the urban renewal project powers pursuant to the provisions of section 40-58-15.

2. Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

3. For the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of an urban renewal agency or a housing authority hereunder, a municipality may in addition to its other powers and upon such terms, with or without consideration, as it may determine do and perform any or all of the actions or things which, by the provisions of subsection 1 of this section, a public body is authorized to do or perform, including the furnishing of financial and other assistance.

4. For the purposes of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality may in addition to any authority to issue bonds pursuant to section 40-58-10 issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

Source: S. L. 1955, ch. 281, § 13; R. C. 1943, 1957 Supp., § 40-5813.

40-58-14. Title of purchaser.—Any instrument executed by a municipality and purporting to convey any right, title or interest in any property under this chapter shall be conclusively presumed to have been executed in compliance with the provisions of this chapter in so far as title or other interest of any bona fide purchasers, lessees or transferees of such property is concerned.

Source: S. L. 1955, ch. 281, § 14; R. C. 1943, 1957 Supp., § 40-5814.

40-58-15. Exercise of powers in carrying out urban renewal project.—1. A municipality may itself exercise its urban renewal project powers as herein defined or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency created by section 40-58-16 or by the housing authority, if one exists or is subsequently established in the community. In the event the local governing body makes such determination, the urban renewal agency or the housing authority, as the case may be, shall be vested with all of the urban renewal project powers in the same manner as though all such powers were conferred on such agency or authority instead of the municipality. If the local governing body does not elect to make such determination, the municipality in its discretion may exercise its urban renewal project powers through a board or commissioner or through such officers of the municipality as the local governing body may by resolution determine.

2. As used in this section, the term "urban renewal project powers" shall include the rights, powers, functions and duties of a municipality under this chapter, except the following: the power to determine an area to be a slum or blighted area or combination thereof and to designate such area as appropriate for an urban renewal project; the power to approve and amend urban renewal plans and to hold any public hearings required with respect thereto; the power to establish a general plan for the locality as a whole; the power to formulate a workable program under section 40-58-04; the powers, duties and functions referred to in section 40-58-18; the power to make the determinations and findings provided for in sections 40-58-03 and 40-58-05 and subsection 4 of section 40-58-06; the power to issue general obligation bonds; and the power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in subsection 8 of section 40-58-07.

Source: S. L. 1955, ch. 281, § 15; R. C. 1943, 1957 Supp., § 40-5815.

40-58-16. Urban renewal agency.—1. There is hereby created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality: Provided, that such agency shall not transact any business or exercise its powers hereunder until or unless the local governing body has made the finding prescribed in section 40-58-05 and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 40-58-15.

2. If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five commissioners. The term of office of each such commissioner shall be one year.

3. A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number. Any persons may be appointed as commissioners if they reside within the area of operation of the agency which shall be coterminous with the area of operation of the municipality and are otherwise eligible for such appointments under this chapter.

The mayor shall designate a chairman and vice-chairman from among the commissioners. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March thirty-first of each year a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the auditor or the village clerk, as the case may be, and in the office of the agency.

4. For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after he shall have been given a copy of the charges at least ten days prior to such hearing and have had an opportunity to be heard in person or by counsel.

Source: S. L. 1955, ch. 281, § 16; R. C. 1943, 1957 Supp., § 40-5816.

40-58-17. Interested public officials, commissioners or employees.—No public official or employee of a municipality or board or commission thereof, and no commissioner or employee of a housing authority or urban renewal agency which has been vested by a municipality with urban renewal project powers under section 40-58-15 shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban

renewal project of such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this act in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, commissioner or employee shall not participate in any action by the municipality or board or commission thereof, housing authority, or urban renewal agency affecting such property. Any disclosure required to be made by this section to the local governing body shall concurrently be made to a housing authority or urban renewal agency which has been vested with urban renewal project powers by the municipality pursuant to the provisions of section 40-58-15. No commissioner or other officer of any housing authority, urban renewal agency, board or commission exercising powers pursuant to this chapter shall hold any other public office under the municipality other than his commissionership or office with respect to such housing authority, urban renewal agency, board or commission. Any violation of the provisions of this section shall constitute misconduct in office.

Source: S. L. 1955, ch. 231, § 17; R. C. 1943, 1957 Supp., § 40-5817.

40-58-18. Ordinances relating to repair, closing and demolition of dwellings unfit for human habitation.—1. Whenever any municipality finds that there exist in such municipality dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions, including those set forth in subsection 3 hereof, rendering such dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of such municipality, power is hereby conferred upon such municipality to require or cause the repair, closing or demolition or removal of such dwellings in the manner herein provided. A "dwelling" shall mean any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any appurtenances belonging thereto or usually enjoyed therewith.

2. Upon the adoption of an ordinance finding that dwelling conditions of the character described in subsection 1 hereof exist within a municipality, the governing body of such municipality is hereby authorized to adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation. Such ordinances shall include the following provisions:

- a. That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.
- b. Whenever a petition is filed with the public officer or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer on his own motion that any dwelling is unfit for human habitation, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such dwelling including persons in possession a complaint stating the charges in that respect. Such complaint shall contain a notice that a hearing will be held before the public officer or his designated agent at a place therein fixed not less than ten days nor more than thirty days after the serving of said complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.
- c. If, after such notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order which,
 - (1) if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality shall fix a certain percentage of such cost as being reasonable for such purpose), requires the owner, within the time specified in the order, to repair, alter, or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or
 - (2) if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality shall fix a certain percentage of such cost as being reasonable for such purpose), requires the owner, within the time specified in the order, to remove or demolish such dwelling.
- d. If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause such dwelling to be repaired, altered or improved, or to be vacated and closed.
- e. If the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished.
- f. The amount of the cost of such repairs, alterations or improvements, or vacating the dwelling, or removal or demolition by the

public officer shall be a lien against the real property upon which such cost was incurred and such lien, including as part thereof allowance of his costs and necessary attorneys' fees, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property. If the dwelling is removed or demolished by the public officer he shall sell the materials of such dwelling and shall credit the proceeds of such sale against the cost of the removal or demolition and if there be any balance remaining, it shall be paid to the parties entitled thereto as determined by proper judicial proceedings instituted by the public officer after deducting the costs of such judicial proceedings, including his necessary attorneys' fees incurred therein, as determined by the court.

3. An ordinance adopted by a municipality pursuant to this section shall provide that the public officer may determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling which are dangerous or injurious to the health, safety or morals of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality, or which have a blighting influence on properties in the area. Such conditions may include the following, without limitation: defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building or zoning regulations, or any other laws or regulations relating to the use of land and the use and occupancy of building and improvements. Such ordinance may provide additional standards to guide the public officer or his agents or employees in determining the fitness of a dwelling for human habitation.

4. Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of such complaint or order upon such persons may be made by publishing the same once each week for two consecutive weeks in a newspaper printed and published in the municipality, or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of such complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of such complaint or order shall also be filed with the clerk of the county in which the dwelling is located and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

5. Any person affected by an order issued by the public officer may petition the district court for an injunction restraining the public officer

from carrying out the provisions of the order, and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause: Provided, however, that within sixty days after the posting and service of the order of the public officer, such person shall petition such court. Hearings shall be had by the court on such petitions within twenty days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter a final order or decree in the proceeding. In all such proceedings the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of compliance by such person with any order of the public officer.

6. An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following power in addition to others herein granted:

- a. To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitation;
- b. To administer oaths, affirmations, examine witnesses and receive evidence;
- c. To enter upon premises for the purpose of making examinations, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;
- d. To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of such ordinance; and
- e. To delegate any of his functions and powers under such ordinance to such officers, agents and employees as he may designate.

7. The governing body of any municipality adopting an ordinance under this section shall as soon as possible thereafter prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in such municipality for the purpose of determining the fitness of such dwellings for human habitation, and for the enforcement and administration of its ordinance or ordinances adopted under this section.

8. Nothing in this section shall be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regula-

tions, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

9. Nothing in this section shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

10. The governing body of a city is hereby authorized to adopt ordinances prescribing minimum standards for the use and occupancy of dwellings throughout the city and to prevent the use or occupancy of any dwelling which is injurious to the public health, safety, morals or welfare.

Source: S. L. 1955, ch. 281, § 18; R. C. 1943, 1957 Supp., § 40-5818.

40-58-19. Definitions.—In this chapter, unless the context or subject matter otherwise requires:

1. "Agency" or "urban renewal agency" shall mean a public agency created by section 40-58-16.
2. "Municipality" shall mean any incorporated city in the state.
3. "Public body" shall mean the state or any municipality, township, board, commission, authority, district, or any other subdivision or public body of the state.
4. "Local governing body" shall mean the city council, the board of city commissioners, or the board of township supervisors, as the case may be.
5. "Mayor" shall mean the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.
6. "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.
7. "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.
8. "Slum area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.
9. "Blighted area" shall mean an area other than a slum area which by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in rela-

tion to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use: Provided, that if such blighted area consists of open or predominantly open land the conditions contained in the proviso in subsection 4 of section 40-58-06 shall apply.

10. "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.
11. "Slum clearance and redevelopment" may include
 - a. acquisition of a slum area or a blighted area or portion thereof;
 - b. demolition and removal of buildings and improvements;
 - c. installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this chapter in accordance with the urban renewal plan; and
 - d. making the land available for development or redevelopment by private enterprise or public agencies including sale, initial leasing, or retention by the municipality itself as its fair value for uses in accordance with the urban renewal plan.
12. "Rehabilitation" or "conservation" may include the restoration and renewal of a slum or blighted area or portion thereof, in accordance with an urban renewal plan, by
 - a. carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;
 - b. acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities;

- c. installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this chapter; and
 - d. the disposition of any property acquired in such urban renewal area including sale, initial leasing, or retention by the municipality itself at its fair value for uses in accordance with such urban renewal plan.
13. "Urban renewal area" means a slum area or a blighted area or a combination thereof which the local governing body designates as appropriate for an urban renewal project.
14. "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan
- a. shall conform to the general plan for the municipality as a whole; and
 - b. shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.
15. "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.
16. "Bonds" shall mean any bonds including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.
17. "Obligee" shall include any bondholder, agents or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.
18. "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.
19. "Area of operation" shall mean the area within the corporate limits of the municipality and the area within five miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city or town

unless a resolution shall have been adopted by the governing body of such other city or town declaring a need therefor.

20. "Housing authority" shall mean a housing authority created by and established pursuant to the housing authorities law.
21. "Board" or "commission" shall mean a board, commission, department, division, office, body or other unit of the municipality.
22. "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

Source: S. L. 1955, ch. 231, § 19; R. C. 1943, 1957 Supp., § 40-5819; S. L. 1967, ch. 323, § 226.

40-58-20. Tax increments.—

1. At any time after the governing body of a municipality has approved an urban renewal plan for any urban renewal area, it may request the county auditor and treasurer to compute, certify, and remit tax increments resulting from the renewal of the area in accordance with the plan and any modifications thereof, and the county auditor and treasurer shall do so in accordance with the provisions of this section.

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2. The auditor shall compute and certify the original taxable value of each lot and parcel of real estate in the area, as last assessed and equalized before the date of the request, including the taxable value of any lot or parcel theretofore acquired by the municipality or its urban renewal agency, as last assessed and equalized before it was acquired.

3. In each subsequent year the auditor shall compute and certify the net amount by which the original taxable value of all lots and parcels of real estate in the area, as then assessed and equalized (including real estate then held by the municipality or urban renewal agency at zero), has increased or decreased in comparison with the original taxable value of all such real estate. The net amount of the increase or decrease is referred to in this section as the incremental value or the lost value for that year, as the case may be.
4. In any year when there is an incremental value, the auditor shall exclude it from the taxable value upon which he computes the mill rates of taxes levied in that year by the state, the county, the municipality, the school district, and every other political subdivision having power to tax the urban renewal area, until the cost of renewal of the area has been reimbursed in accordance with this section. However, he shall extend the aggregate mill rate of such taxes against the incremental value as well as the original taxable value, and the amount of taxes received from such extension against the incremental value is referred to in this section as the tax increment for that year.
5. In any such year when there is a lost value, the auditor shall compute and certify the amounts of taxes which would have resulted from the extension against the lost value of the mill rate of taxes levied that year by the state and each political subdivision having power to tax the urban renewal area. The amounts so computed are referred to in this section as the tax losses for that year.
6. The county auditor shall segregate all tax increments from the urban renewal area in a special fund, crediting to the fund, in each year when there is an incremental value, that proportion of each collection of taxes on real estate within the area which the incremental value bears to the total taxable value in that year.
7. Upon receipt of any tax increments in the fund the county treasurer, at the times when he distributes collected taxes to the state and to each political subdivision for which a tax loss has previously been recorded, shall also remit to each of them from the tax increment fund an amount proportionate to the amount of such tax loss, until all such tax losses have been reimbursed. Thereafter, at the time of each such distribution, he shall remit the entire balance then on hand in the fund to the municipality, until the cost of renewal of the area has been reimbursed to the municipality as provided in this section.
8. The cost of renewal subject to reimbursement from the tax increment fund for each urban renewal area shall include all expenditures incident to carrying out the urban renewal plan for the area and any modifications thereof, not otherwise re-

imbursed in one of the ways referred to below; including but not limited to all expenses of the clearance, redevelopment, rehabilitation, and conservation of the area as defined in section 40-58-19, and all interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality or urban renewal agency to provide funds for payment of such expenses. From the total cost to be reimbursed there shall be deducted all amounts received from the federal government or others, and all special assessments, revenues, and other receipts except property taxes, which are actually collected and applied to the payment of such cost or such bonds, notes, or other obligations, at the times when such payments are due.

9. The tax increments from any urban renewal area may be appropriated by the governing body of the municipality for the payment of any general obligation bonds, special improvement warrants, or refunding improvement bonds issued by the municipality to provide funds for payment of the cost of renewal, together with interest and redemption premiums thereon, other than that portion, if any, of such principal, interest, and redemption premiums which can be paid when due from collections of special assessments, revenues, or other funds, excluding property taxes, which are pledged for the payment thereof. When special improvement warrants or refunding improvement bonds are issued to pay the cost of public improvements of special benefit to properties within the urban renewal area, the governing body may cause such special benefits to be computed, together with the cost properly assessable against such properties, and may appropriate the tax increments from the area to the payment of such cost, in lieu of levying special assessments upon such property. In this event the amount so appropriated, divided into the same number of installments as the special assessments and with interest at the same rate on the declining balance thereof, shall be deemed a part of the special assessments appropriated for payment of the cost, within the meaning of section 40-26-08.
10. When the cost of renewal of any urban renewal area has been fully paid and all bonds, notes, or other obligations issued by the municipality to pay such cost have been retired, or funds sufficient for the retirement thereof have been received by the municipality, the governing body shall cause this to be reported to the county auditor, who shall thereafter compute the mill rates of all taxes upon the total taxable value of the urban renewal area. Any balance then on hand in the tax increment fund shall be distributed by the county treasurer to the state and all political subdivisions having power to tax property in the area, in amounts proportionate to the amounts of the tax losses previously reimbursed to them.

PROMOTION AND ACQUISITION OF MUNICIPAL
PARKING FACILITIES

Section 40-60-01	Reservation of areas for parking.	Section 40-60-02	Powers of municipalities per- taining to parking areas.
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40-60-01. Reservation of areas for parking.—To alleviate traffic congestion in municipalities, prevent the development of blight, and implement orderly plans for urban development and urban renewal, it is necessary that adequate and suitable space be reserved, particularly in central business areas, for parking facilities; which phrase is defined to include, but without limitation, all off-street lots, sites, parking meters and other control devices, garages, ramps and other structures and accessories, both above and below ground, which are used or useful for the parking, delivery, fueling and servicing of automobiles and other motor vehicles, the collection of charges therefor, and the convenience of the patrons of the facilities. The withdrawal of a disproportionate amount of land for this purpose from use for commercial development and from the tax base of municipalities is undesirable and can be avoided, when the growth of business areas makes it economically feasible, by the construction of multi-level parking ramps and garages, and by making the space above, below or adjacent thereto available for commercial development and use. It is the policy and purpose of the state to authorize and encourage municipal action, and cooperation of municipalities with public and private persons, firms and corporations, in the acquisition, construction, improvement, development, extension, financing, operation, maintenance and leasing of parking facilities, and of commercially usable space therein and adjacent thereto for the purposes and by the methods described in section 40-60-02.

Source: S. L. 1967, ch. 341, § 1.

§ 136; 39 Am. Jur., Parks, Squares, and Playgrounds, §§ 24, 28.

Collateral References.

Municipal Corporations—221-230,
265-268, 273½, 276, 680, 716-718, 721-722.
37 Am. Jur., Municipal Corporations,

63 C. J. S. Municipal Corporations,
§§ 1057, 1322; 64 C. J. S. Municipal Cor-
porations, §§ 1766, 1908-1910.

40-60-02. Powers of municipalities pertaining to parking areas.—Any municipality is authorized:

1. To acquire, construct, improve, develop and extend parking facilities.
2. To provide funds for this purpose by the budgeting of current funds, the levy of taxes or special assessments, or the issuance of bonds or other obligations, or by any combination of these means, pursuant to and in accordance with the provisions of the North Dakota Century Code, chapters 21-03, 40-22 to 40-27, 40-35, 40-40, 40-41 and 40-57, and of all other applicable laws now in force or hereafter enacted.
3. To devote to this purpose any land, buildings, structures or equipment which may be owned by the municipality, and are determined by its governing body to be useful therefor and not required for another municipal purpose, and whose use for this purpose is not restricted by the terms of any conveyance or judgment by which such properties were acquired.
4. To operate and maintain parking facilities and establish and collect rates, charges and rentals for the use thereof by all public and private persons, firms and corporations.
5. To lease parking facilities, and any part thereof, to any public or private person, firm or corporation, upon such terms as the governing body may determine; provided that:
 - a. No lease may be executed for a longer term, or shall be subject to extension at the option of the lessee for an additional term or terms, exceeding the maximum period pre-

- b. Every lease shall provide that title to all real property, buildings, and improvements on real property or in buildings subject to the lease, whether or not previously owned or acquired, constructed or financed by the municipality, and title to all other real and personal property subject to the lease which was previously owned or is acquired, constructed or financed by the municipality, shall be and remain in the municipality.
- c. If the entire site of any parking facilities and all improvements constructed thereon are leased, the lease shall specify the amount of space to be operated and maintained exclusively for public parking of motor vehicles, and the area of such space shall be not less than two times the area of the space, if any, to be made available within the facilities for commercial use.
- d. Any lease may permit the sublease of part or all of the facilities, but the minimum parking space specified in accordance with subsection c shall be used or subleased solely for public parking, and all other space in the facilities shall be used or subleased solely for commercial or industrial use furthering the policies and purposes declared in the North Dakota Century Code, chapter 40-57, and may be so used notwithstanding any provisions of that chapter precluding the use of previously owned municipal property or of municipally operated property for the projects therein authorized.
- e. If under the terms of the lease the lessee is to construct and finance part or all of the parking facilities to be provided at the leased site, the lease may permit the lessee's interest therein to be mortgaged to secure the repayment of money borrowed by the lessee for this purpose, upon reasonable terms approved by the governing body of the lessor, and may allow the mortgagee a reasonable time to cure any default in the payment of rentals and the performance of covenants under the lease, prior to the termination thereof by the lessor.
- f. Every lease or part or all of the facilities at a particular site shall provide for the payment by the lessee of all costs of the operation and maintenance of the leased property including, but without limitation, all taxes and special assessments validly levied on the premises or leasehold, adequate insurance against loss of or damage to the leased property and loss or damage to other persons or property from any and all operations conducted thereon, and for payment by the lessee of net annual rentals at least sufficient to pay all principal and interest becoming due during the lease term on any amount of bonds issued by the municipality to pay capital costs of the leased property, and at least sufficient to reimburse the municipality for any other expenditure made by it to pay such capital costs, in annual amounts such that, if continued uniformly over the useful life of the facilities, the total amount of such investment would be repaid in full with interest at five percent per annum on the balance thereof from time to time remaining unpaid; and
- g. The leasehold created by any such lease is classified as personal property, and any such portion of such premises not used solely for public parking of motor vehicles shall be subject to taxation.

CHAPTER 40-61

MUNICIPAL PARKING AUTHORITY ACT

Section	Section
40-61-01 Definitions.	40-61-10 Debt guarantee fund.
40-61-02 Municipal parking authorities.	40-61-11 Agreement of a city.
40-61-03 Purpose and powers of an authority.	40-61-12 State and city not liable on bonds.
40-61-04 Officers and employees.	40-61-13 Bonds legal investments for public officers.
40-61-05 Conveyance of property by a city to an authority — Acquisition of property by a city or by an authority.	40-61-14 Tax exemptions.
40-61-06 Construction contracts.	40-61-15 Tax contract by the state.
40-61-07 Moneys of the authority.	40-61-16 Remedies of bondholders.
40-61-08 Bonds of an authority.	40-61-17 Actions against an authority.
40-61-09 Notes of an authority.	40-61-18 Termination of an authority.
	40-61-19 Inconsistent provisions in other acts superseded.

40-61-01. Definitions.—In this chapter, unless the context or subject matter otherwise requires:

1. "Authority" shall mean any corporation created under the authority of this chapter.
2. "City" shall mean any city with a municipal parking authority.
3. "Bonds" shall mean the bonds authorized in this chapter.
4. "Board" shall mean the members of the authority.
5. "Real property" shall mean lands, structures, franchises, and interest in lands, and any and all things usually included within the said term, and includes not only fees simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms of years.
6. "Project" shall mean any area or place operated or to be operated by an authority for the parking or storing of motor and other vehicles and shall, without limiting the foregoing, include all real and personal property, driveways, roads, approaches, structures, terminals of all kinds, garages, meters, mechanical equipment, and all appurtenances and facilities either on, above, or under the ground which are used and usable in connection with such parking or storing of such vehicles in the area of the city.
7. "Projects" shall mean more than one project.
8. "Property owner" shall mean either a real estate owner, the beneficial owner of a leasehold on a building constructed on railroad property, or the owner of a retail or wholesale personal property inventory subject to an annual tax in excess of one thousand dollars.

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Source: N.D.C.C.; S. L. 1969, ch. 387,

Source: S. L. 1967, ch. 342, § 2.

1973 SUPPLEMENT

Title.

Section 1 of chapter 342, S. L. 1967 provided: "This act shall be known as the 'Municipal Parking Authority Act'".

Collateral References.

Municipal Corporations—221-230, 265-268, 273-275, 680, 716-718, 721-722, 860-861, 869-870, 895-955.

37 Am. Jur., Municipal Corporations, § 136; 38 Am. Jur., Municipal Corporations, §§ 494-501, 524-558, 562; 39 Am. Jur., Parks, Squares, and Playgrounds, § 24.

63 C. J. S. Municipal Corporations, §§ 961-962, 964, 1036-1038, 1054, 1057, 1062-1066, 1078-1085, 1322; 64 C. J. S. Municipal Corporations, §§ 1905, 1907-1910, 1912.

40-61-02. Municipal parking authorities.—Any city may create a board to be known as a "municipal parking authority". Such board shall be a body corporate, constituting a public benefit corporation, and its existence shall commence upon the appointment of the members as herein provided. It shall consist of a chairman and four other members, who shall be appointed by the governing body of the city. Three members of the board shall be property owners within the benefited areas and two members of the board shall be guarantors of the bonds of the authority if any have been issued and guaranteed by property owners. If the authority has not issued bonds or if property owners have not guaranteed said bonds as hereinafter provided, then two members may be appointed at large. Of the members first appointed, one shall be appointed for a period of one year, one for a period of two years, and one for a period of three years, one for a period of four years, and one for a period of five years. At the expiration of such terms, the terms of office of their successors shall be five years. Each member shall continue to serve until the appointment and qualification of his successor. Vacancies in such board occurring otherwise than by the expiration of term shall be filled for the unexpired term. The members of the board shall choose from their number a vice chairman. The governing body of the city may remove any member of the board for inefficiency, neglect of duty, or misconduct in office, giving him a copy of the charge against him and an opportunity of being heard in person, or by counsel in his defense upon not less than ten days' notice. The members of the board shall be entitled to no compensation for their services but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties. The powers of the authority shall be vested in and exercised by a majority of the members of the board then in office. Such board may delegate to one or more of its members or to its officers, agents, and employees such powers and duties as it may deem proper. Such board and the corporate existence of the authority shall continue until all its liabilities have been met and its bonds have been paid in full or such liabilities or bonds have otherwise been discharged and until the existence of the authority is terminated by official action of the governing body of the city. Upon its ceasing to exist, all its rights and properties shall pass to the city.

Source: N.D.C.C.; S. L. 1969, ch. 387,

40-61-03. Purpose and powers of an authority.—The purpose of an authority shall be to construct, operate, and maintain one or more projects in the city and to promote and acquire municipal parking facilities in accordance with the provisions of this chapter and to promote municipal development by making space above, below, or adjacent to parking facilities available for commercial development and use in order to further purposes outlined in this chapter and in chapter 40-60 of the North Dakota Century Code. To carry out said purpose, an authority shall have power:

1. To sue and be sued.
2. Repealed by S. L. 1973, ch. 80, § 21. 1973 SUPPLEMENT
3. To acquire, hold, and dispose of personal property for its corporate purposes, including the power to purchase prospective or tentative awards in connection with the condemnation of real property.
4. To acquire in the name of the city by purchase or condemnation, and use necessary real property. All real property acquired by the authority by condemnation shall be acquired in the manner provided in the condemnation law or in the manner provided by law for the condemnation of land by a city.
5. To make bylaws for the management and regulation of its affairs, and, subject to agreements with bondholders, for the regulation of the project.
6. To appoint officers, agents, and employees, to prescribe their qualifications, and to fix their compensation; provided, however, the officers, agents and employees shall not be subject to the civil service law.
7. To appoint an attorney, who may be the city attorney, and to fix his compensation.
8. To make contracts and leases, and to execute all instruments necessary or convenient.
9. To construct such buildings, structures, and facilities as may be necessary.
10. To reconstruct, improve, maintain, and operate the projects.
11. To accept grants, loans, or contributions from the United States, the state of North Dakota, or any agency or instrumentality of either of them, or the city, or an individual, by bequest or otherwise, and to expend the proceeds for any purposes of the authority.
12. To fix and collect rentals, fees, and other charges for the use of the projects or any of them, subject to and in accordance with such agreements with bondholders as may be made as hereinafter provided.
13. To construct, operate, or maintain in the projects all facilities necessary or convenient in connection therewith; and to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed; to rent parts thereof, and grant concessions, all on such terms and conditions as it may determine; provided, however, that neither the authority, the city, or any agency of an authority or city, or any other person, firm, or corporation shall, within or on any property comprising a part of any project authorized by this chapter, sell, dispense, or otherwise handle any product used in or for the servicing of any motor vehicle using any project or facility authorized by this chapter; provided further, that the location of sites of the projects shall be subject to the prior approval of the governing body of the city.
14. To encourage commercial development and use of space above, below, or adjacent to parking facilities by exercising the powers granted municipalities under subsection 5 of section 40-60-02 of the North Dakota Century Code; provided, however, that subdivision c of subsection 5 of section 40-60-02 shall not be applicable to leases entered into by the authority.

40-61-03.1. Financing projects and facilities.—An authority may provide funds for its purposes by using the following methods or any combination thereof:

1. Issuing bonds of an authority as authorized by section 40-61-03 of this chapter.
2. Issuing notes of an authority as authorized by section 40-61-09 of this chapter.
3. In cooperation with cities whereby cities may agree to assist in financing projects and facilities through the issuance of municipal bonds or other obligations, budgeting of current funds, the levy of taxes or special assessments, or by any combination of these means pursuant to or in accordance with the provisions of North Dakota Century Code, chapters 21-03, 40-22 to 40-27, 40-35, 40-40, 40-41, and 40-57 and all other applicable laws now in force or hereafter enacted.

Source: S. L. 1969, ch. 387, § 1.

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40-61-04. Officers and employees.—Municipal parking authorities shall not be subject to civil service or merit system laws, veterans preference laws, or other laws, ordinances, and regulations pertaining to the status of municipal employees. Employees of a municipal parking authority shall have the same position as employees of a private corporation and the board of directors of a municipal parking authority shall manage their employee relationships in the same manner as private corporations.

Source: S. L. 1967, ch. 342, § 5.

40-61-05. Conveyance of property by a city to an authority—Acquisition of property by a city or by an authority.—1. A city may, by resolution or resolutions of the governing body or by instruments authorized by such resolutions, convey, with or without consideration, to an authority real and personal property owned by the city for use by an authority as a project or projects or a part thereof. In case of real property so conveyed, the title thereto shall remain in the city but the authority shall have the use and occupancy thereof for so long as its corporate existence shall continue. In the case of personal property so conveyed, the title shall pass to the authority.

2. A city may acquire in the name of the city by purchase or condemnation real property in the city for any of the projects.

3. Contracts may be entered into between a city and an authority providing for the property to be conveyed by a city to an authority, the additional property to be acquired by a city and so conveyed, and the amounts, terms and conditions of payment to be made by an authority. Any such contracts between a city and an authority may be pledged by the authority to secure its bonds and may not be modified thereafter except as provided by the terms of the pledge. The governing body of a city may authorize such contracts between a city and an authority and no other authorization on the part of a city for such contracts shall be necessary.

4. An authority may itself acquire real property for a project in the name of the city at the cost and expense of the authority by purchase or condemnation pursuant to the condemnation law or pursuant to the laws relating to the condemnation of land by cities. An authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.

5. In case an authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project, then, if such real property was acquired at the cost and expense of the city, the authority shall have power to surrender its use and occupancy thereof to the city, or, if such real property was acquired at the cost and expense of an authority, then the authority shall have power to sell, lease, or otherwise dispose of said real property at public or private sale, and shall retain and have the power to use the proceeds of sales, rentals, or other moneys derived from the disposition thereof for its purposes.

Source: S. L. 1967, ch. 342, § 6.

40-61-06. Construction contracts.—An authority shall let contracts for construction in the same manner, so far as practicable, as is provided by law for contracts of cities except that where the estimated expense of a contract does not exceed five hundred dollars, such contract may be entered into without public letting. Nothing in this section shall be construed to limit the power of an authority to do any construction directly by the officers, agents, and employees of the authority.

Source: S. L. 1967, ch. 342, § 7.

40-61-07. Moneys of the authority.—All moneys of an authority shall be paid to the city treasurer as agent of the authority, who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out by the treasurer on requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions after audit by the treasurer. All deposits of such moneys shall, if required by the treasurer or the authority, be secured by obligations of the United States or of the state of North Dakota of a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give such security for such deposits. The treasurer and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing. An authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any of its bonds as to the custody, collection, securing, investment, and payment of any moneys of the authority, or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be acquired in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

The accounts of an authority shall be subject to the supervision of the state auditor.

Source: S. L. 1967, ch. 342, § 8.

40-61-08. Bonds of an authority.—1. An authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any purpose mentioned in section 40-61-03, including the acquisition, construction, reconstruction, and repair of personal and real property of all kinds deemed by the board to be necessary or desirable to carry out such purpose, as well as to pay such expenses as may be deemed by the board necessary or desirable to the financing thereof and placing the project or projects in operation. An authority shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase or payment of the bonds to be refunded. In computing the total amount of bonds of an authority which may at any time be outstanding the amount of the outstanding bonds to be refunded from the proceeds of the sale of new bonds or by exchange for new bonds shall be excluded. Except as may otherwise be expressly provided by an authority, the bonds of every issue shall be payable out of any moneys or revenues of an authority, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Notwithstanding the fact that the bonds may be payable from a special fund, if they are otherwise of such form and character as to be negotiable instruments under article eight of the Uniform Commercial Code, the bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of article eight of the Uniform Commercial Code, subject only to the provisions of the bonds for registration.

2. The bonds shall be authorized by resolution of the board and shall bear such date or dates, mature at such time or times, not exceeding thirty years from their respective dates, bear interest at such rate or rates, resulting in an average annual net interest cost not exceeding eight percent per annum payable annually or semiannually on those issues which are sold at private sale, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. There shall be no interest rate ceiling on those issues sold at public sale.

3. Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be part of the contract with the holders of the bonds thereby authorized, as to:

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- a. Pledging all or any part of the revenues of a project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist.
 - b. The rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.
 - c. The setting aside of reserves or sinking funds, and the regulation and disposition thereof.
 - d. Limitations on the right of an authority to restrict and regulate the use of a project.
 - e. Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or of any issue of the bonds.
 - f. Limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding or other bonds.
 - g. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.
 - h. Limitations on the amount of moneys derived from a project to be expended for operation, administration, or other expenses of an authority.
 - i. Vesting in a trustee or trustees of such property, rights, powers, and duties in trust as an authority may determine which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders pursuant to section 40-61-15, and limiting or abrogating the right of the bondholders to appoint a trustee under said section or limiting the rights, duties, and powers of such trustee.
 - j. Any other matters, of like or different character, which in any way affect the security or protection of the bonds.
4. It is the intention hereof that any pledge of revenues or other moneys made by an authority shall be valid and binding from the time when the pledge is made; that the revenues or other moneys so pledged and thereafter received by an authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against an authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.
5. Neither the members of an authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

6. An authority shall have power out of any funds available therefor to purchase bonds. An authority may hold, cancel, or resell such bonds, subject to and in accordance with agreements with bondholders.

7. In the discretion of an authority, the bonds may be secured by a trust indenture by and between an authority and a corporate trustee, which may be any trust company or bank within or without the state of North Dakota. Such trust indenture may contain such provisions for protecting, and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of an authority in relation to the construction, maintenance, operation, repair, and insurance of the project or projects and the custody, safeguarding, and application of all moneys, and may provide that the project or projects shall be constructed and paid for under the supervision and approval of consulting engineers. Notwithstanding the provisions of section 40-61-07, an authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues of the project or projects to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation, and repairs of the project or projects. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them, and the trustee under such trust indenture shall have and possess all of the powers which are conferred by section 40-61-15 upon a trustee appointed by bondholders.

Source: S. L. 1967, ch. 342, § 9.

40-61-09. Notes of an authority.—An authority shall have power from time to time to issue notes and from time to time to issue renewal notes, herein referred to as notes, maturing not later than five years from their respective original dates for any purpose or purposes for which bonds may be issued, whenever an authority shall determine the payment thereof can be made in full from any moneys or revenues which an authority expects to receive from any source. Such notes may, among other things, be issued to provide funds to pay preliminary costs of surveys, plans, or other matters relating to any proposed or existing project. An authority may pledge such moneys or revenues, subject to any other pledge thereof, for the payment of the notes and may

in addition secure the notes in the same manner and with the same effect as herein provided for bonds and may also secure the notes by the guarantee of two or more property owners. The notes shall be issued in the same manner as bonds. An authority shall have power to make contracts for the future sale from time to time of the notes by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and a

authority shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes, or violation of any of the obligations of an authority to the noteholders, the noteholders shall have all the remedies provided herein for bondholders.

Source: N.D.C.C.; S. L. 1969, ch. 387,
§ 5.

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40-61-10. Debt guarantee.—Prior to the issuance of any bonds authorized by this chapter the authority shall require that the payment: of not less than ten percent of the principal and interest of the bonds issued for any project be guaranteed through the use of one or more of the following methods:

1. A contract of personal guarantee entered into between the authority, the bondholders and at least three benefited property owners.
2. The guarantee of said payments by the municipality through the issuance of municipal bonds or other obligations, budgeting of current funds, the levy of taxes or special assessments or by any combination of these pursuant to and in accordance with the provisions of chapters 21-03, 40-22 to 40-27, 40-35, 40-40, 40-57, and of all other applicable laws now in force or hereinafter enacted.

Source: N.D.C.C.; S. L. 1969, ch. 387,
§ 6; 1973, ch. 330, § 2.

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40-61-11. Agreement of a city.—1. Cities may pledge to and agree with the holders of the bonds that the city will not limit or alter the rights hereby vested in the authority to acquire, construct, maintain, reconstruct, and operate the project or projects, to establish and collect rentals, fees, and other charges and to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until the bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders, are fully met and discharged.

2. Authorities are hereby authorized, in their discretion, for and on behalf of themselves and the city which authorized them, to covenant and agree with the holders of the bonds, with such exceptions and limitations as it may deem in the public interest, that no public parking areas except those acquired and operated by the authority will be constructed or operated in the city by the city, or by any public benefit or other corporation the members or some of which are elected or are appointed by city officials, until either the bonds, together with interest thereon, interest on any unpaid installments of interest and

all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders are fully met and discharged, or principal or interest of any of the bonds shall be overdue and unpaid for a period of three years or more.

Source: S. L. 1967, ch. 342, § 12.

40-61-12. State and city not liable on bonds—Exceptions as to cities.

—The bonds and other obligations of an authority shall not be a debt of the state of North Dakota and the state shall not be liable thereon. The bonds and other obligations of an authority shall not be a debt of a city and a city shall not be liable thereon unless a city agrees to assist in financing projects and facilities through the issuance of municipal bonds or other obligations which are considered to be a part of the debt of the city as provided in 40-61-03.1.

Source: N.D.C.C.; S. L. 1969, ch. 387,

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40-61-13. Bonds legal investments for public officers.—Except as otherwise provided in the constitution of this state, the bonds are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, and all other persons whatsoever except as herein-after provided, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them; provided that, notwithstanding the provisions of any other general or special law to the contrary, such bonds shall not be eligible for the investment of funds, including capital, of trusts, estates, or guardianships under the control of individual administrators, guardians, executors, trustees, and other individual fiduciaries. The bonds are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: S. L. 1967, ch. 342, § 14.

40-61-14. Tax exemptions.—1. It is hereby determined that the creation of an authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the city which has authorized it and its environs, and is a public purpose, and an authority shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this chapter and shall be relieved to pay no ad valorem taxes upon any of the property acquired by or under its jurisdiction or control or supervision or upon its activities.

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2. Any bonds or notes issued pursuant to this chapter, together with the income therefrom, as well as the property of an authority, shall be exempt from taxation, except for transfer and estate taxes.

Source: S. L. 1967, ch. 342, § 15.

40-61-15. Tax contract by the state.—The state of North Dakota covenants with the purchasers and with all subsequent holders and transferees of bonds or notes issued by an authority pursuant to this chapter, in consideration of the acceptance of and payment for the bonds or notes, that the bonds and notes of an authority issued pursuant to this chapter and the income therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds or notes shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.

Source: S. L. 1967, ch. 342, § 16.

40-61-16. Remedies of bondholders.—1. In the event that an authority shall default in the payment of principal of or interest on any issue of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that an authority shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of any issue of the bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the district court of the county in which the authority is located and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

2. Such trustee may, and upon written request of the holders of twenty-five percent in principal amount of such bonds then outstanding shall, in his or its own name:

- a. By action or special proceeding enforce all rights of the bondholders, including the right to require an authority to collect revenues adequate to carry out by any agreement as to, or pledge of, such revenues, and to require an authority to carry out any other agreements with the holders of such bonds and to perform its duties under this chapter.
- b. Bring suit upon such bonds.
- c. By action or suit in equity, require an authority to account as if it were the trustee of an express trust for the holders of such bonds.
- d. By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds.
- e. Declare all such bonds due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five percent of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

3. The district court shall have jurisdiction of any suit, action, or proceeding by the trustee on behalf of bondholders. The venue of any such suit, action or proceeding shall be laid in the county in which the authority is located.

4. Before declaring the principal of all such bonds due and payable, a trustee shall first give thirty days' notice in writing to an authority.

5. Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the project the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders, shall take possession of all moneys and other property derived from or applicable to the acquisition, construction, operation, maintenance, and reconstruction of such part or parts of the project and proceed with the acquisition of any necessary real property in connection with the project that an authority has covenanted to construct and with any construction which an authority is under obligation to do and to operate, maintain, and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of an authority under the direction of the court. In any suit, action, or proceeding by the trustee, the fee, counsel fees, and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

6. Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders on the enforcement and protection of their rights.

Source: S. L. 1967, ch. 342, § 17.

40-61-17. Actions against an authority.—1. In every action against an authority for damages, for injuries to real or personal property, or for the destruction thereof, or for personal injuries or death, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim, or claims upon which such action is founded were presented to a member of the authority, or to its secretary, or to its chief executive officer and that the authority has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment.

Source: S. L. 1967, ch. 342, § 19.

40-61-18. Termination of an authority.—Repealed by S. L. 1969, ch. 1973 SUPPLEMENT

40-61-19. Inconsistent provisions in other acts superseded.—In so far as the provisions of this chapter are inconsistent with the provisions of any other act, general or special, or of any local law of a city, the provisions of this title shall be controlling.

Source: S. L. 1967, ch. 342, § 20.

CHAPTER 55-04

ACQUIRING LANDS FOR PUBLIC PARKS

Section	Section
55-04-01	55-04-02
Authority of state or county to acquire title to lands for park purposes.	Appraisal of lands—Price may not exceed appraised value.
	55-04-03
	Mineral rights to be reserved

CHAPTER 58-17

TOWNSHIP PARKS*

Section	Section
58-17-01 Townships — Authority to acquire, operate, and regulate parks.	58-17-03 Townships — Parks — Tax levy may be certified by board of supervisors.
58-17-02 Townships — Parks — Tax levy for park purposes.	

58-17-01. Townships—Authority to acquire, operate, and regulate parks.—Any township may acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate, and police any park either within or without the geographic limits of such township, and may use for such purposes any available property owned or controlled, or occupied for the purpose or purposes enumerated in this chapter. Any such park shall be declared to be acquired, owned, leased, controlled, or occupied for a public purpose in accordance with public need.

Source: S. L. 1969, ch. 540 § 1.

52 Am. Jur., Towns and Townships,
§ 30.

Collateral References.

87 C. J. S. Towns, § 91.

Towns 35(1).

*Only §58-17-01 is reproduced

CHAPTER 38-11

RECLAMATION OF STRIP-MINED LANDS

Section		Section	
38-14-01	Declaration of policy.	38-14-08	Fees and forfeitures—Deposit.
38-14-02	Definitions.	38-14-09	Bond forfeiture proceedings—Prerequisites.
38-14-03	Necessity of license.	38-14-10	Administrative Agencies Practice Act to apply to this chapter—Rules and regulations.
38-14-04	Application for license—Bond—Fee—Permit.	38-14-11	State mine inspector shall be administrative officer.
38-14-05	Duties of operator.	38-14-12	Penalties.
38-14-06	Entry upon lands for inspection.	38-14-13	Cooperation with federal and state agencies.
38-14-07	Bond of operator—Amount—Sufficiency of surety—Violations—Compliance.		

38-14-01. Declaration of policy.—It is declared to be the policy of this state to provide, after surface mining operations are completed, for reclamation of affected lands to encourage productive use including but not limited to: the planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home, and industrial sites; and for the conservation, development, management and appropriate use of all the natural resources of such areas for compatible multiple purposes; to aid in maintaining or improving the tax base; and protecting the health, safety and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state.

Source: S. L. 1969, ch. 332, § 1.

38-14-02. Definitions.—Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "Reclaimed or reclaim" means conditioning areas affected by surface mining to make them suitable for any uses or purposes consistent with those enumerated in the statement of policy.
2. "Overburden" means all of the earth and other materials which lie above natural deposits of coal, clay, stone, sand, gravel, or other minerals, and also means such earth and other materials disturbed from their natural state in the process of surface mining.
3. "Surface mining" relates to the mining of coal, clay, stone, sand, gravel, or other minerals by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed.
4. "Operator" means any person, firm, association, cooperative, corporation, any department, agency, or instrumentality of the state, or any governmental subdivision thereof engaged in and controlling a surface mining operation.
5. "Pit" means a tract of land, from which overburden has been or is being removed for the purpose of surface mining.
6. "Final cut" means the last pit created in a surface-mined area.
7. "High wall" means that side of the pit adjacent to unmined land.
8. "Affected land" means the area of land from which overburden has been removed for surface mining of any mineral or upon which overburden or refuse has been deposited, or both.
9. "Refuse" means all waste material directly connected with the cleaning and preparation of minerals mined by surface mining.
10. "Ridge" means a lengthened elevation of overburden created in the surface mining process.
11. "Peak" means a projecting point of overburden created in the surface mining process.
12. "Commission" means the public service commission, or such department, bureau, or commission as may lawfully succeed to the powers and duties of said commission.
13. "Permit term" means a period of time beginning with the date upon which a permit is given for strip mining of lands under the provisions of this chapter, and ending with the expiration of the next succeeding three years.
14. "Original contour" means a terrain resembling, and similar in nature to, the terrain existing prior to commencement of mining operations.
15. "Rolling topography" means backfilled and graded at an angle not exceeding that of the approximate original grade of the land.
16. "Topsoil" means that material (normally the A and, in some cases, the upper portion of the B horizon) which, based upon an official national cooperative soils survey, is acceptable for resspreading on the surface of regraded areas to provide a medium for plant growth.

Source: N.D.C.C.; S. L. 1973, ch. 285,

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38-14-03.1. Powers of the commission.—The commission shall have the following powers:

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1. To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;
2. To encourage and conduct training, research, experiments, and demonstrations, and to collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;
3. To adopt rules and regulations with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration;
4. To examine and act upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading, and for the reclamation of the area of land affected by his operation;
5. To make investigations or inspections which may be deemed necessary to ensure compliance with any provision of this chapter;
6. To order the suspension of any permit for failure to comply with any of the provisions of this chapter or any regulations adopted pursuant thereto; and
7. To order the stopping of any operation that is started without first having secured a permit and approval of the plan as required by this chapter.

Source: S. L. 1973, ch. 285, § 2.

38-14-01. Application for license.—Bond—Fee—Permit.—Any operator desiring to engage in surface mining, in an area where the overburden shall exceed ten feet in depth, shall make written application to the commission for a permit. Application for such permit shall be made upon a form furnished by the commission. The form shall contain a description of the tract or tracts of land and the estimated number of acres thereof to be affected by surface mining by the applicant during the permit term, which term shall extend for the next succeeding three years. The description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty so that it may be located and distinguished from other lands, and a statement that the applicant has the right and power by legal estate owned to mine by surface mining and to reclaim the land so described.

Such application shall be accompanied by a bond or security to attach to the described lands from and after the time a permit is granted which shall aid in meeting the requirements of section 38-14-07; and a fee computed as follows: For an area of ten acres or less to be affected during the permit term, a fee of twenty-five dollars and an amount equal to the amount of ten dollars multiplied by the number of acres to be affected between two and ten acres, inclusive; for an area of more than ten acres but not more than fifty acres to be affected during the permit term, a fee of one hundred dollars and an amount equal to the amount of ten dollars multiplied by the number of acres to be affected between eleven and fifty acres, inclusive; for an area of more than fifty acres to be affected during the permit term, a fee of two hundred seventy-five dollars and an amount equal to the amount of ten dollars multiplied by the number of acres to be affected in excess of fifty acres. Upon the receipt of such application, a bond or security and all fees due from the operator, the commission may issue a permit to the applicant which shall entitle him during the permit term to engage in surface mining on the land therein described.

An operator desiring to have his permit amended to cover additional land may file an amended application with the commission. Upon re-

ceipt of the amended application, and such additional fee and bond or security as may be required under the provisions of this chapter, the commission may issue an amendment to the original permit covering the additional land described in the amended application.

An operator may withdraw any land covered by a permit, excepting affected land, by notifying the commission thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this chapter shall be reduced proportionately.

Where acreage for which a permit has been in effect is not mined, or where mining operations have not been completed thereon during the permit term, the permit as to such acreage shall be extended by the department on a year-to-year basis without payment of any additional fee. The application for a permit shall be deemed approved if not denied within thirty days after the filing thereof. If the permit is not approved, the commission shall state its reasons for disapproval, together with the requirements for approval.

Source: N.D.C.C.; S. L. 1973, ch. 285, § 3.

38-11-01.1. Notice.—Upon receipt of an application for a permit, the commission shall publish notice of such application and the area to be covered by it in the official county newspaper of the county in which the area lies.

Source: S. L. 1973, ch. 285, § 4.

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38-14-05. Duties of the operator.—Every operator to whom a permit is issued pursuant to the provisions of this chapter shall file with the commission a reclamation plan, together with geologic, topographic, and soils maps acceptable to the commission, before December first of the year in which the permit was issued. After approval of the reclamation plan by the commission, the operator may engage in surface mining during the permit term upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

1. The operator shall regrade the area to approximately the original contour or rolling topography unless a different topography shall be required for an intended higher use.
2. The operator shall spread topsoil or approved surface material within the permit area over the regraded area to a depth of two feet; provided, however, that if two feet of such material is not available within the permit area, all topsoil or approved surface material that is available shall be spread over the regraded area.
3. The operator shall impound, drain, or treat all runoff water so as to reduce soil erosion, damage to agricultural lands, and pollution of streams and other waters.
4. All final cuts and end walls must be backsloped to an angle not exceeding thirty-five degrees from the horizontal; provided, how-

ever, that an operator may propose alternative plans other than backfilling where a water impoundment or other special topographic feature is desired, if such restoration will be consistent with the purposes of this chapter.

5. The operator shall remove or bury all metal, lumber, equipment, or other refuse resulting from the operation. No operator shall throw, dump or pile, or permit the throwing, dumping, piling, or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing substances in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.
6. After backslowing, surface mining operations shall not approach property lines, established right-of-way lines of any public roads, streets, or highways closer than a distance of twenty feet.
7. The operator shall submit to the commission no later than the first day of September during each year of the permit term, a map in a form acceptable to the commission showing the location of the pit or pits by section, township, range, and county, with such other description as will identify the land which the operator has affected by surface mining during such permit term and has completed mining operations thereon, with a legend upon such map showing the number of acres of affected land.
8. The operator's reclamation plan and the commission's approval or modification thereof shall be based upon the advice and technical assistance of the state soil conservation committee, the state game and fish department, the state forester, and other agencies or individuals having experience in foresting and reclaiming surface-mined lands with forest or agronomic or horticultural species, based upon scientific knowledge from research into reclaiming and utilizing forest and agronomic species on surface-mined lands. In addition, the operator and the commission shall have the landowner designate his preference for a reclamation plan covering his affected land. The operator's plan shall designate which parts of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial, or other uses including food, shelter, and ground cover for wildlife, and shall show the same by appropriate designation on the reclamation map. The plan shall be deemed approved if not disapproved or modified by the commission within sixty days of its receipt thereof. If the plan is disapproved or modified, the commission shall state the reasons for such disapproval or modification, together with the requirements for approval.
9. The operator shall sow, set out, or plant upon the affected land described in the reclamation plan and map or maps, seeds, plants,

- cuttings or trees, shrubs, grasses, or legumes as shall be approved in writing by the commission.
10. All reclamation provided for hereunder shall be carried to completion by the operator prior to the expiration of three years after termination of the permit term. Where affected land fails to support approved perennial plant species, except in cases of annual crop production or other approved uses, at the end of three years, the commission shall, at the request of the operator, extend the reclamation period from year to year for a period of five years from the termination of the permit term on the land in question. If further extension of the reclamation period is necessary to accomplish acceptable reclamation, such extension shall be made at the discretion of the commission, or the commission shall declare forfeiture of the surety bond or security on such land not satisfactorily reclaimed.
 11. If the operator is unable to acquire sufficient planting stock of desired tree species from state nurseries or any nursery within the state, or acquire such tree species elsewhere at comparable prices, the commission shall grant the operator an extension of time until planting stock is available to plant such land as originally planned, or shall permit the operator to select an alternate method of reclamation in keeping with the provisions of this chapter.
 12. Upon the application of the operator, the commission in its discretion may allow the modification of an approved reclamation plan, provided that justice requires the modification, and the modified plan will carry out the purposes of this chapter.
 13. Until reclamation has been accomplished to the satisfaction of the commission, control of the affected lands shall remain in the agency engaged in the reclaiming activity.

Source: N.D.C.C.; S. L. 1973, ch. 285,

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38-14-05.1. Limitations.—The legislature finds that there are certain areas in the state of North Dakota which are impossible to reclaim either by natural growth or by technological activity, and that if surface mining is conducted in these certain areas, such operations may naturally cause stream pollution, landslides, flooding, the permanent destruction of land for agricultural purposes without approved rehabilitation for other uses, the permanent destruction of consequential aesthetic values, the permanent destruction of consequential recreational areas and the future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and, in general, creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the state, and that such areas shall not be mined by the surface mining process.

Therefore, authority is hereby vested in the commission to delete certain areas from all surface mining operations:

1. No application for a permit shall be approved by the commission if there is found on the basis of the information set forth in the application or from information available to the commission and made available to the applicant that the requirements of this chapter or rules and regulations hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading, or reclamation of the affected area can be carried out consistent with the purpose of this chapter.
2. If the commission finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of North Dakota with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides, water-pollution, or permanent destruction of land for agricultural purposes without approved rehabilitation for other uses cannot feasibly be prevented, the commission may delete such part of the land described in the application upon which such overburden exists.
3. If the commission finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, then it shall delete such areas from the permit application before it can be approved.
4. The commission shall not give approval to strip mine where the operation will adversely affect a state, national, or interstate park unless adequate screening and other measures as approved by the commission are incorporated into the permit application.

Whenever the commission finds that ongoing surface mining operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, it may order immediate cessation of such operations and take such other action or make such changes in the permit as it may deem necessary to avoid said described conditions.

Source: S. L. 1973, ch. 285, § 6.

38-14-06. Entry upon lands for inspection.—The commission, or its accredited representatives, may enter upon lands of the operator at all reasonable times for the purpose of inspection, to determine whether the provisions of this chapter have been complied with.

Source: S. L. 1969, ch. 332, § 6.

38-14-07. Bond of operator—Amount—Sufficiency of surety—Violations—Compliance.—Any bond herein provided to be filed with the department by the operator shall be in such form as the commission shall prescribe, payable to the state of North Dakota, conditioned that the operator shall faithfully perform all requirements of this chapter and comply with all rules of the commission made in accordance with the provisions of this chapter. Such bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in North Dakota, as surety. The penalty of such bond shall be five hundred dollars for each acre or portion thereof of land to be affected by surface mining in an area where the overburden shall exceed ten feet in depth, for the ensuing permit term. In lieu of such

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bonds, the operator may deposit cash or government securities or both with the commission in an amount equal to that of the required surety bond on conditions as above prescribed. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this chapter. Such bond or security shall be in effect and subject to forfeiture in accordance with this chapter from and after the time a permit is granted by the commission until the mined acreages have been reclaimed, approved and released.

A bond filed as above prescribed shall not be canceled by the surety unless it shall give not less than ninety days' notice to the commission, and in no event shall a bond be canceled on lands that at the time of cancellation have become affected lands under the provisions of this chapter.

If the license to do business in North Dakota of any surety upon a bond filed with the commission pursuant to this chapter shall be suspended or revoked, the operator, within thirty days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient corporate surety licensed to do business in North Dakota. Upon failure of the operator to make substitution of surety as herein provided, the commission shall have the right to suspend the permit of the operator until such substitution has been made.

The commission shall give written notice to the operator of any violation of this chapter or noncompliance with any of the rules and regulations promulgated by the commission hereunder and if corrective measures, approved by the commission, are not commenced, or agreed to within ninety days, the commission may proceed as provided in section 38-14-09 to request forfeiture of the bond or security. The amount of forfeiture shall be five hundred dollars for each acre or portion thereof of affected land. Such forfeiture shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this chapter. However, any operator who refuses or willfully fails to comply with the provisions of this chapter shall be ineligible for any further mining permits, and shall cease all mining operations in this state within thirty days after the forfeiture.

The commission shall have the power to reclaim, in keeping with the provisions of this chapter, any affected land with respect to which a bond has been forfeited.

Whenever an operator shall have completed all requirements under the provisions of this chapter as to any affected land, he shall notify the commission thereof. If the commission determines that the operator has completed reclamation requirements and achieved results appropriate to the use for which the area was reclaimed, the commission shall release the operator from further obligations regarding such affected land and the penalty of the bond shall be reduced proportionately.

Source: N.D.C.C.; S. L. 1973, ch. 285,
§ 7.

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38-14-07.1. Hearing and appeal.—Any person claiming to be aggrieved or adversely affected by any rule and regulation or order of the commission or its failure to enter an order may request a hearing by the commission. The hearing shall be conducted pursuant to chapter 28-32. There shall be a right of appeal to the district court from any adverse ruling by the commission.

Source: S. L. 1972, ch. 235, § 8.

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38-14-08. Fees and forfeitures—Deposit.—All fees and forfeitures collected under the provisions of this chapter shall be deposited in the state treasury and credited to a special account to be designated as the strip-mining and reclamation fund. This fund shall be available to the commission and, subject to legislative appropriation, may be expended for the administration and enforcement of this chapter and for the reclamation of land affected by strip-mining operations.

Source: N.D.C.C.; S. L. 1973, ch. 235,

38-14-09. Bond forfeiture proceedings—Prerequisites.—The commission may institute proceedings to have the bond of the operator forfeited for violation by the operator of any of the provisions of this chapter or for noncompliance with any lawful rule or regulation promulgated by the commission thereunder.

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Source: S. L. 1969, ch. 332, § 9.

38-14-10. Administrative Agencies Practice Act to apply to this chapter—Rules and regulations.—Chapter 28-32 shall apply to this chapter except as otherwise provided, and the commission may adopt and promulgate rules and regulations respecting the administration of this chapter thereunder.

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Source: S. L. 1969, ch. 332, § 10.

38-14-11. State mine inspector shall be administrative officer.—Repealed by S. L. 1973, ch. 285, § 12.

38-14-12. Penalties.—Any person required by this chapter to have a permit who engages in surface mining in an area where the overburden shall exceed ten feet in depth, without previously securing a permit to do so as prescribed by this chapter, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than fifty dollars nor more than one thousand dollars. Each day of operation without the permit required by this chapter shall be deemed a separate violation.

Any person who knowingly and willfully violates any regulation issued or approved pursuant to this chapter or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or who willfully falsifies, tampers with, or knowingly and willfully renders inaccurate, any monitoring device or method required to be maintained under this chapter, shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

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Notwithstanding any other provision of this chapter, the commission may by injunctive procedures, without bond or other undertaking, proceed against any operator found to be surface mining without a permit or in violation of the provisions of this chapter, or the rules and regulations promulgated thereunder. No liability whatsoever shall accrue to the commission or its authorized representative in proceeding against any operator pursuant to this section.

Source: N.D.C.C.; S. L. 1973, ch. 285, § 10.

38-14-13. Cooperation with federal and state agencies.—The commission shall have the authority to cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency or officer thereof, and to file such reports as required by federal law for any purposes relating to the reclamation of any affected lands.

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Source: N.D.C.C.; S. L. 1973, ch. 285,

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UTILIZATION OF THIS STUDY

The Old West Regional Commission has requested this Study in order to provide useful information to an unusually wide spectrum of interests. It is highly probable that elected officials from the village to the federal level, governmental administrators and planners, a variety of private businesses and countless individual citizens will all find that some facet of the Study is addressed to their respective concerns. It is not surprising, therefore, that no single methodology for utilizing the six volumes which comprise this Study is equally suited to the needs of all potential beneficiaries. However, it is possible to suggest several general approaches by which various materials contained herein may be identified and located.

If verbatim statutory materials or other specific items of information are sought, one useful device for determining whether they are included in the Study, and if so, in which volume, is the "Summary of Contents." This concise outline lists the Volume titles and the major sections of the Study, and is reproduced at the beginning of each volume.

If the "Summary of Contents" fails to provide adequate guidance, the "Summary of Study" contained in Volume One offers a far more comprehensive introduction to the Study's contents. The "Summary of Study" briefly describes the substance of each of the six volumes and provides a limited sampling of the analytical sections of the Study. From the "Summary of Study" a particular volume may be identified as the most probable source of the information sought. In that event, the Overview which appears at the beginning of the relevant volume should then be examined. Each Overview provides a narrative description of the volume and describes the rationale utilized to select and organize the materials contained in that volume.

All statutes reproduced in the Study have been collected in Volumes Two, Four, Five and Six. Selected statutes from the states of Montana, North Dakota and Wyoming are located in Volumes Four, Five and Six respectively. Specific legislation from any of these three states can be located by referring to the Common Index found in the front of the appropriate volume. A reader interested in statutes or ordinances from any other state should examine the Table of Contents for Volume Two.

A more general treatment of the problems associated with rapid population growth than that which is provided by the collection of statutes appears in the subsection of Volume One entitled "Responses of Areas of Previous Rapid Growth". This section describes and analyzes the ways in which selected areas have responded to growth patterns. It is suggested that the temptation to turn immediately to the subsections dealing with "Problems Encountered" and "Government Reactions" be resisted. Inquiry should instead begin with an examination of the first subsection entitled "Areas of Interest: Problems and Responses." This approach is recommended because the description of experiences in other geographic areas provides an essential foundation for the articulation of common problems and the analysis of available responses. In a similar vein, the "Principles for Legislation" which form the concluding subsection of Volume One can be fully understood only if the three prior subsections have been carefully considered.

A variety of detailed references are located in the bibliographies located in the second portion of Volume Three. Among the items included in the bibliographical section are: sources for obtaining additional data and practical assistance with respect to specific problems, an

extensive bibliography of useful publications, and a list of individuals and organizations throughout the United States familiar with the topics considered in this Study. Also contained in the bibliographical section is a list of Environmental Impact Statements and other Reports and Studies recently completed or now in progress, together with sufficient information to obtain copies of these documents. Thus, the bibliographies provide access to voluminous additional information concerning both specific geographic areas and specific topics of interest.

Legislative innovations in response to the problems of rapid population growth, and the judicial construction of these innovations, are currently evolving at a rapid pace. Accordingly, it must be recognized that the material included in this Study was compiled on or before September 3, 1974 and may have been altered or amended subsequent to that date. Questions concerning the applicability to specific problems of any portion of the Study should be addressed to governmental agencies or private legal counsel particularly familiar with those specific problems. However, general comments concerning the Study or inquiries about its reproduction may be addressed to the Old West Regional Commission.

